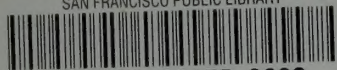


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1 HEARING

2 SENATE RULES COMMITTEE

3 STATE OF CALIFORNIA

10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

16 WEDNESDAY, MAY 16, 1984

17 1:30 P.M.

25 Reported by:

26 Evelyn Mizak
27 Shorthand Reporter

1 MEMBERS PRESENT

2 Senator David Roberti, Chairman
3 Senator Ray Johnson, Vice-Chairman
4 Senator William Craven
5 Senator Henry Mello

6 MEMBERS ABSENT

7 Senator Nicholas Petris

8 STAFF PRESENT

9 Cliff Berg, Executive Officer
10 Pat Webb, Committee Secretary
11 Rick Rollens, Consultant
12 Nancy Michel, Consultant
13 Bruce Samuel, Assistant to Senate Rules Committee

14 GOVERNOR'S APPOINTEES REQUIRED TO APPEAR

15 ROBERT L. HARVEY, Member and Chair,
16 Unemployment Insurance Appeals Board

17 J.T. HAWTHORNE, Member,
18 California Transportation Commission

19 APPOINTEES SUBJECT TO CONFIRMATION BUT NOT REQUIRED TO APPEAR

20 BAINBRIDGE B. LELAND, Member,
21 Board of Pilot Commissioners for the Bays
22 of San Francisco, San Pablo and Suisun

23 ARCHIBALD M. SIMENSTAD, Member,
24 Board of Pilot Commissioners for the Bays
25 of San Francisco, San Pablo and Suisun

26 HENRY W. SIMONSEN, Member,
27 Board of Pilot Commissioners for the Bays
28 of San Francisco, San Pablo and Suisun

WILLIAM PAPARIAN, Member,
State Social Services Advisory Board

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J.T. HAWTHORNE, Member,
California Transportation Commission

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but not Required to Appear

4

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4

Committee Action

5

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Certificate

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTT: Next is Governor's appointees appearing today, Robert L. Harvey, Member and Chairman of the Unemployment Insurance Appeals Board.

Mr. Harvey, we'll ask you what we ask all the Governor's appointments: Why you feel you are qualified to assume this position.

MR. HARVEY: Well generally and, hopefully briefly, I have had an extensive background in the area of administrative law, having taught in the California Administrative Law College, worked as an administrative law judge for over nine years. I've also been involved in various aspects of state government regarding the administrative activities, including budgetary personnel, other areas of responsibility.

I have been fortunate enough to have served for seven years in the position for which I'm now seeking confirmation. I believe that I have gained respect and been objective, both in the area of dealing with staff and with other colleagues on the Board.

I'm concerned primarily about the administration of justice. I believe that the administrative law procedure that is administered by the U.I. Appeals Board is a very effective, quick, inexpensive means of adjudicating and determining important rights and responsibilities for many of our citizens. And I'm obligated and dedicated to providing a fair hearing, expedient and prompt action in those areas.

In summary that's a basic statement.

1 CHAIRMAN ROBERTI: Thank you.

2 Any discussion or debate? Any questions of Mr. Harvey?

3 I saw Mr. Harvey in my office, had a number of questions
4 and a lengthy discussion.

5 SENATOR CRAVEN: I move Mr. Harvey's confirmation to the
6 Floor.

7 CHAIRMAN ROBERTI: Senator Craven moves Mr. Harvey's
8 confirmation do pass, then, to the Floor.

9 Is there any opposition? Seeing none, the Secretary
10 will call the roll.

11 SECRETARY WEBB: Senator Craven.

12 SENATOR CRAVEN: Aye.

13 SECRETARY WEBB: Senator Mello.

14 SENATOR MELLO: Aye.

15 SECRETARY WEBB: Senator Petris. Senator Johnson.

16 SENATOR JOHNSON: Aye.

17 SECRETARY WEBB: Senator Roberti.

18 CHAIRMAN ROBERTI: Aye.

19 The vote is four to nothing, confirmation recommended to
20 the Floor.

21 Next is J.T. Hawthorne, Member of the California
22 Transportation Commission.

23 Mr. Hawthorne, we'll ask you why you feel you're
24 qualified to assume this position.

25 MR. HAWTHORNE: Thank you, Mr. Chairman.

26 My primary interest in transportation and an association
27 with highway and transportation systems, I think that I can add
28

1 something to the Transportation Commission. I hope that I'm
2 qualified and sincerely believe that I am.

3 CHAIRMAN ROBERTI: Very good.

4 I see by your background you have work experience both
5 in your own machinery company and your tractor equipment company.

6 MR. HAWTHORNE: Yes, sir.

7 CHAIRMAN ROBERTI: Very good.

8 Are there any questions of Mr. Hawthorne?

9 SENATOR CRAVEN: I move the confirmation of Mr.
10 Hawthorne.

11 CHAIRMAN ROBERTI: Senator Craven moves Mr. Hawthorne's
12 confirmation do pass and to the Floor.

13 We've reviewed your resume. I think you come well-
14 recommended. You've received the construction industry's
15 commendations, so we look forward to having your ear when we have
16 transportation problems.

17 MR. HAWTHORNE: Thank you. I look forward to working
18 with you.

19 SENATOR JOHNSON: I have one quick question.

20 CHAIRMAN ROBERTI: Senator Johnson.

21 SENATOR JOHNSON: Have you ever had the good opportunity
22 to travel north of Sacramento towards Oregon and up through those
23 mountains and all that area?

24 MR. HAWTHORNE: Yes, I certainly have.

25 SENATOR JOHNSON: Thank you very much.

26 CHAIRMAN ROBERTI: Any opposition?

27 Seeing none, the Secretary will call the roll.

28

1 SECRETARY WEBB: Senator Craven.

2 SENATOR CRAVEN: Aye.

3 SECRETARY WEBB: Senator Mello.

4 SENATOR MELLO: Aye.

5 SECRETARY WEBB: Senator Petris. Senator Johnson.

6 SENATOR JOHNSON. Aye.

7 SECRETARY WEBB: Senator Roberti.

8 CHAIRMAN ROBERTI: Aye.

9 The vote is four to nothing, Senator Petris is absent,
10 and confirmation is recommended do pass and to the Floor.

11 Congratulations.

12 MR. HAWTHORNE: Thank you, gentlemen.

13 CHAIRMAN ROBERTI: Confirmation of Governor's appointees
14 subject to confirmation but not required to appear today:
15 Bainbridge B. Leland, Member of the Board of Pilot Commissioners
16 for the Bays of San Francisco, San Pablo and Suisun; Archibald
17 Simenstad, Member of the Board of Pilot Commissioners for the
18 Bays of San Francisco, San Pablo and Suisun; Henry W. Simonsen,
19 Member of the Board of Pilot Commissioners for the Bays of San
20 Francisco, San Pablo and Suisun; William Paparian, Member of the
21 State Social Services Advisory Board.

22 Is there any discussion or debate? Is there any
23 opposition?

24 SENATOR CRAVEN: Move the nominees.

25 CHAIRMAN ROBERTI: Senator Craven moves the nominees be
26 recommended to the Floor for confirmation.

27 Secretary will call the roll.
28

1 SECRETARY WEBB: Senator Craven.

2 SENATOR CRAVEN: Aye.

3 SECRETARY WEBB: Senator Mello.

4 SENATOR MELLO: Aye.

5 SECRETARY WEBB: Senator Petris. Senator Johnson.

6 SENATOR JOHNSON: Aye.

7 SECRETARY WEBB: Senator Roberti.

8 CHAIRMAN ROBERTI: Aye.

9 The vote is four to nothing. The recommendation is that
10 they will be confirmed and sent to the Floor.

11 (Thereupon this portion of the Senate
12 Rules Committee hearing was adjourned
13 at approximately 2:25 P.M.)

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of May, 1984.

EVELYN MIZAK
Shorthand Reporter

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26 Shorthand Reporter
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Senator William Craven

Senator Henry Mello

Senator Nicholas Petris

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Senator Ray Johnson, Vice-Chairman

STAFF PRESENT

Cliff Berg, Executive Officer

Pat Webb, Committee Secretary

Rick Rollens, Consultant

Nancy Michel, Consultant

Bruce Samuel, Assistant to Senate Rules Committee

GOVERNOR'S APPOINTEES REQUIRED TO APPEAR

RICHARD C. BAIZ, Chief Deputy Director,
Department of Social Services

MARILYN C. LAZAR, Commissioner,
Workers' Compensation Appeals Board

C.L. SWEZEY, Commissioner,
Workers' Compensation Appeals Board

C. GORDON TAYLOR, Commissioner and Chairman,
Workers' Compensation Appeals Board

APPOINTEES SUBJECT TO CONFIRMATION BUT NOT REQUIRED TO APPEAR

DONALD F. DRISCOLL, Member,
California Regional Water Quality Control Board
Central Coastal Region

I.G. (LEO) POPOFF, Member
California Regional Water Quality Control Board
Lahontan Region

DALE L. SARE, Member
California Regional Water Quality Control Board
Lahontan Region

1 JAMES H. GROSSMAN, Member
2 California Regional Water Quality Control Board
3 Los Angeles Region

4 JACK R. WITZ, Member
5 California Regional Water Quality Control Board
6 Los Angeles Region
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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Governor's Appointees appearing today, Richard C. Baiz, Chief Deputy Director of the Department of Social Services.

Mr. Baiz, please tell us why you feel you're qualified to assume this position.

MR. BAIZ: Mr. Chairman and members of the Committee, I'm Richard Baiz.

I have eleven years of administrative experience servicing the public. Prior to that period I was involved to pursue my education in working with economically disadvantaged communities.

My understanding of government and the legislative process has come about in many activities, especially those activities which involve securing revenues for local programs from H.U.D., H.H.S., C.I.A., General Revenues Sharing, Small Business Administration, the United States Department of Energy. These experiences were made possible through numerous professional appointments at various universities, among many community based organizations, and within state and local government.

My academic credentials include a B.A. degree in political science from U.C. Santa Barbara; a Master's Degree in public administration from the University of Southern California.

Combined with my professional experience, my education has facilitated my further administrative development, especially

1 my personal experience as a small business owner, as an Assistant
2 Dean for the School of Medicine at U.C. Irvine.

3 I enjoy managing resources. I consider myself somewhat
4 adept at budgets, although I really enjoy working with other
5 individuals in problem solving activities.

6 My long term goal is to be the very best public servant.
7 My upbringing as a migrant farm worker has made me personally
8 sensitive to the problems of the disadvantaged and tempered my
9 professional ambitions with the humility I believe is essential
10 in a true public servant.

11 I'm trying to do the very best job possible. I look
12 forward to working with each one of you and the challenge of
13 making California a better place to live.

14 CHAIRMAN ROBERTI: Thank you, Mr. Baiz.

15 Any questions? Any opposition?

16 Let me ask you a couple of questions. Right now I
17 understand that a good number of your employees in the Department
18 are employed with the Refugee Services program. And there's been
19 some concern that the Department has not lobbied extensively
20 enough for California's share of refugee funding.

21 What are you doing; what do you propose to do; what's
22 the current status of lobbying in that matter?

23 MR. BAIZ: I'm aware of that problem, and that problem
24 has been discussed at the Secretary's level, Secretary David
25 Swope, and the Director's Office. It's a very major concern.
26 We're very aware of that problem. It's my understanding that we
27 do need more legislation and more Congressional input from the
28 California sector in solving that problem.

1 Florida has a very extensive Congressional input, and I
2 think they're beating us out in some of the monies.

3 CHAIRMAN ROBERTI: So you are in the process of
4 formulating some kind of program?

5 MR. BAIZ: Yes, sir. It's my understanding that --

6 CHAIRMAN ROBERTI: Hopefully to get money from the
7 federal government in competition with other states in this area?

8 MR. BAIZ: That's what has been -- that's been the
9 problem.

10 CHAIRMAN ROBERTI: Do you have any idea of how many
11 employees right now in your Department do deal with the refugee
12 issue?

13 MR. BAIZ: Yes, sir.

14 CHAIRMAN ROBERTI: How many is that?

15 MR. BAIZ: How many employees in our Refugee Department?

16 CHAIRMAN ROBERTI: Right.

17 MR. BAIZ: We have about 40; 40 employees in the
18 Department.

19 CHAIRMAN ROBERTI: How many employees all together in
20 your Department?

21 MR. BAIZ: Oh, we have -- in my total division we have a
22 total of about 60 employees. That's including Life Care
23 Contracts, the Emergency Welfare Services program, Public
24 Information Office, and the Individual Family Grant program.

25 CHAIRMAN ROBERTI: Any other questions? Senator Craven.

26 SENATOR CRAVEN: Move the confirmation of Richard C.
27 Baiz with do pass to the Floor.
28

1 CHAIRMAN ROBERTI: Senator Craven moves Mr. Richard
2 Baiz's confirmation do pass and to the Floor.

3 Senator Petris has a question.

4 SENATOR PETRIS: Yes, this same subject of the refugee.

5 Can you tell us how much money will be available from
6 the federal government overall in the refugee program, if any, in
7 the coming year?

8 MR. BAIZ: That is still being negotiated by the Office
9 of Refugee Resettlement Program. It's our understanding that
10 there will be some more monies allocated from that program, but
11 we're not still sure what that amount's going to be.

12 SENATOR PETRIS: There was a drastic cut this past year,
13 wasn't there?

14 MR. BAIZ: Yes, there was. Somewhere in the area of \$3
15 million. We're hoping that we're going to be getting an
16 additional \$1.5 million, hopefully.

17 SENATOR PETRIS: You would still be a million and a half
18 short?

19 MR. BAIZ: We'll still be a million and a half short.

20 SENATOR PETRIS: What is the reason that the federal
21 government doesn't provide more?

22 MR. BAIZ: They really have not given us a good
23 reason --

24 SENATOR PETRIS: Have you asked them?

25 MR. BAIZ: -- to be honest with you. I have asked the
26 Director of the Office of the Resettlement Program, the Refugee
27 Resettlement Program, and he has shared with me that it's been
28

1 basically at the Congressional level. The people from Florida
2 are taking most of the monies, and that's been because they've
3 had a real active legislative lobbyist role in Washington, D.C.
4 in advocating for more refugee monies.

5 SENATOR PETRIS: The President is from California. You
6 know, he's aware of what our refugee problem is.

7 Is there any chance to have your people appeal to the
8 President from your shop?

9 MR. BAIZ: I have spoke to the Director of D.S.S. about
10 this, Ms. McMann, and she's very aware of it. And I'm not sure
11 exactly at this point how that problem's going to be solved.

12 SENATOR PETRIS: My reason I ask you is my experience
13 among people that I've met who are from Asia, is that it has very
14 seriously crippled our ability in California to provide the basic
15 help that we had envisioned and which we were promised. And as a
16 consequence, a lot of the load is dumped on private organizations
17 which really aren't equipped. They don't have the money; they
18 just have volunteers. It's really a very serious issue in many
19 parts of California, especially in the whole Bay area.

20 I would urge you to renew your efforts and do as much as
21 you can to get the support of the White House. It might help
22 overcome some of the activities without taking anything away from
23 similar problems elsewhere. It seems to me we just ought to
24 provide enough money to do it.

25 It would make your job easier; wouldn't it?

26 MR. BAIZ: Yes, it would, sir.

27 SENATOR PETRIS: Thank you.
28

1 CHAIRMAN ROBERTI: The motion is before us. The
2 Secretary will call the roll.

3 SECRETARY WEBB: Senator Craven.

4 SENATOR CRAVEN: Aye.

5 SECRETARY WEBB: Senator Mello.

6 SENATOR MELLO: Aye.

7 SECRETARY WEBB: Senator Petris.

8 SENATOR PETRIS: Aye.

9 SECRETARY WEBB: Senator Johnson. Senator Roberti.

10 CHAIRMAN ROBERTI: Aye.

11 The vote's four to nothing. The confirmation of Mr.
12 Baiz is recommended to the Floor.

13 Congratulations.

14 MR. BAIZ: Thank you, sir.

15 CHAIRMAN ROBERTI: The next appointment is Ms. Marilyn
16 C. Lazar, Commissioner, Workers' Compensation Appeals Board.

17 Ms. Lazar, I'll turn the gavel over to Senator Mello for
18 a moment, but please tell us why you feel you're qualified to
19 assume this position.

20 MS. LAZAR: I've been an attorney for 37 years, and 7 of
21 those years have been as a Workers' Compensation Appeals Judge.
22 Prior to that, I was Chief Counsel for the Labor Commissioner for
23 about 13 years. I've had 20 years in state service.

24 I am people oriented. I'm organized. I'm interested in
25 the Workers' Compensation field, and I think I could do a good
26 job.

27 I have sent my resume to the members of the Committee.
28

1 SENATOR MELLO: Any questions from members of the
2 Committee? Any opposition from the audience?

3 Let me just ask you a couple of brief questions.

4 I see we're getting three new members, all of which are
5 very prominent attorneys, and their resumes look very fine.

6 I want to let you know, I've written a letter with
7 Senator Roberti to the Auditor General to try to see how we can
8 help modernize and bring the Workers' Compensation process into a
9 more expeditious manner because I feel there's some great
10 problems in its ability to really service injured workers in an
11 expeditious manner.

12 Do you think that there's a need for modernization and
13 filling some of the unfilled positions, maybe administrative
14 judges and other staff, or do you think you just see things as
15 moving along as they are as being adequate?

16 MS. LAZAR: No,, I don't see things moving along as they
17 are. I think we need modernization.

18 I understand that we're going to computerize, and I
19 think this will help a great deal. I'm hoping that ultimately we
20 can set our calendar the way the courts set their calendar, by
21 the use of computers.

22 We just finished extensive oral examinations for new
23 judges, and we're interested in improving the quality of the
24 Workers' Compensation judges. We want dedicated, experienced
25 people. And I have just spent nine days sitting on an oral board
26 because I am very concerned that we improve the quality of the
27 people. I mean, I know we need more bodies, but I think we need
28 more quality. And I think that's more important.

1 SENATOR MELLO: What about the clerical part of the
2 operation?

3 MS. LAZAR: Well, I understand that there is going to be
4 an increase in the clerical staff.

5 SENATOR MELLO: Okay.

6 MS. LAZAR: I'm really not involved in the
7 administrative part.

8 SENATOR MELLO: Any further questions? Senator Craven.

9 SENATOR CRAVEN: Thank you, Mr. Chairman.

10 Move the confirmation of Ms. Lazar do pass to the Floor.

11 SENATOR MELLO: All right. The motion has been made to
12 recommend her appointment to the Floor.

13 Any discussion?

14 The Secretary will please call the roll.

15 SECRETARY WEBB: Senator Craven.

16 SENATOR CRAVEN: Aye.

17 SECRETARY WEBB: Senator Mello.

18 SENATOR MELLO: Aye.

19 SECRETARY WEBB: Senator Petris.

20 SENATOR PETRIS: Aye.

21 SECRETARY WEBB: Senator Johnson. Senator Roberti.

22 SENATOR MELLO: We'll leave the roll open momentarily
23 for Senator Roberti. I'm sure he'd want to vote also.

24 Thank you very much. You've been confirmed.

25 Next we'll have the next person, who is Mr. C.L. Swezey,
26 Commissioner for Workers' Compensation Appeals Board.

27

28

1 Mr. Swezey, if you will just give us a reason why you
2 think you're qualified and want to serve on this Board.

3 MR. SWEZEY: Well, I think you all have my resume. It
4 kind of embarrasses me to run through it in detail.

5 Suffice it to say that I've been adjudicating Workers'
6 Compensation cases since 1957. I've been appointed to the Board
7 by three governors, and I've passed this Committee twice. My
8 last appointment, as I understand, was supported by all segments
9 of the compensation community, which I feel indicates confidence
10 in my ability to carry out the job.

11 SENATOR MELLO: Any questions from members? Anyone in
12 the audience wanting to testify on behalf of Mr. Swezey, either
13 for or opposed?

14 SENATOR CRAVEN: Mr. Chairman, I would move the
15 confirmation of Mr. Swezey do pass to the Floor.

16 SENATOR MELLO: All right, Senator Craven moves the
17 confirmation to the Floor.

18 Senator Petris.

19 SENATOR PETRIS: Yes, I wanted to make a strong
20 statement in support. I've known him -- well, I won't embarrass
21 him by telling how many years.

22 MR. SWEZEY: About seventy.

23 SENATOR PETRIS: He's had a distinguished career in
24 state service, and I knew him a long time ago when he was a law
25 student.

26 I soundly second -- we don't have a second procedure,
27 but I'm pleased to be voting in support.
28

1 MR. SWEZEY: Thank you very much, Senator.

2 SENATOR MELLO: Thank you.

3 Mr. Swezey, just briefly let me ask you somewhat the
4 same question I asked the previous witness. What's your overview
5 about the Department and how we might move it into a faster
6 response time for the clients and so forth?

7 MR. SWEZEY: I would certainly share the thoughts of
8 Commissioner Lazar. You mentioned clerical, and I think really
9 clerical is one of the main keys to our service. We have a lot
10 of turnover in some of our offices, and short term people,
11 untrained people. And it does cause a great problem.

12 I think that now the problem is recognized. I think the
13 last Auditor General's report indicates that we made a little bit
14 of improvement. And of course, as Commissioner Lazar indicates,
15 we're just the adjudicatory arm of the division. But it would
16 certainly make our job much easier, and we're certainly 100
17 percent behind the administrative director in his efforts to
18 improve the clerical and professional staff of the Board.

19 SENATOR MELLO: Thank you.

20 All right, there's a motion made to recommend the
21 appointment of Mr. Swezey to the Floor. We'll ask the Secretary
22 to please call the roll.

23 SECRETARY WEBB: Senator Craven.

24 SENATOR CRAVEN: Aye.

25 SECRETARY WEBB: Senator Mello.

26 SENATOR MELLO: Aye.

27 SECRETARY WEBB: Senator Petris.
28

1 SENATOR PETRIS: Aye.

2 SECRETARY WEBB: Senator Johnson. Senator Roberti.

3 SENATOR MELLO: We'll keep the roll open for Senator
4 Roberti and perhaps Senator Johnson.

5 Congratulations. You've been recommended to the Floor
6 for confirmation.

7 MR. SWEZEY: Thank you very much.

8 SENATOR MELLO: Next we'll call on Mr. C. Gordon Taylor,
9 Commissioner and Chairman of the Workers' Compensation Appeals
10 Board.

11 Mr. Taylor, if you can tell us briefly why you think you
12 deserve this very important position.

13 MR. TAYLOR: Thank you, Senator Mello, members of the
14 Committee.

15 It is indeed a very important position. I feel the
16 junior member of the three of us.

17 I've practiced about 24 years. This is my 24th year in
18 workers' compensation almost exclusively. I'm committed to our
19 present system and its improvement. I believe very strongly that
20 there must be a strong judiciary behind -- an appellate level --
21 behind the basic Workers' Compensation judges, both by way of
22 support, by way of guidance -- sometimes we must reverse them,
23 and on occasion even have en banc decisions to give them further
24 guidance.

25 I don't know what else to offer you by way of comment,
26 except that I do feel that I have generally the support of the
27 compensation community. I'm familiar with members of that
28

1 community generally, and I think I'm aware of their needs. And I
2 hope I can assist the other Commissioners in meeting them.

3 SENATOR MELLO: Thank you.

4 Is there anyone from the audience that wants to testify
5 either in support or in opposition to Mr. Taylor? Yes, sir, come
6 forward and have a seat and give your name for the record and be
7 recognized for giving some testimony.

8 MR. MALDONADO: Senators, my name is Richard Maldonado.

9 Approximately a week ago I sent in a documentation
10 charging Mr. Gordon Taylor with conflict of interest. I feel
11 this man has been with this firm of Sedgwick, Detert, Moran and
12 Arnold for the past 20-odd years, 21 to be exact, since 1963.

13 In the last seven years that I will speak about, I will
14 show exactly what the policies of this firm has been. They have
15 attempted fraud; they have conspired to commit fraud; I have been
16 denied my civil rights; my medical rights under Workers'
17 Compensation laws have been violated.

18 The judges involved in here have not given me a decision
19 in over three years. The doctors have told me unless I get my
20 operation immediately, there is a possibility of permanent
21 paralysis from the waist down.

22 The judge has been notified of this on September 29th,
23 1983, and to this date no answer. I have written Mr. Edward
24 Brogan, Assistant Deputy Chief of Workers' Comp. asking for his
25 help. I've written Commissioner Fenton asking for his help. I
26 had written Mr. Cedric Gordon Taylor, Jr. here asking for his
27 help, and I received nothing.
28

1 I have petitioned the disqualification of this judge
2 under Labor Rule 5311, and under Workers' Compensation law of
3 10452 on March 15th. The judge has seen fit to say he will not
4 be disqualified. He has taken the rules upon himself.

5 There is nothing wrong with the Workers' Compensation
6 rules. It is the men who administer it. They are on an
7 autonomistic pedestal. Nobody seems to touch them. They do as
8 they darn well please.

9 I sent this copy here, which is a duplicate, to Senator
10 Roberti, and as of this morning, this afternoon according to Ms.
11 Michel here, he had not seen it.

12 I would suggest and I would recommend very strongly -- I
13 have a 600-page documentation good enough to make 60 Minutes,
14 because they said they have never seen such proof in all their
15 life. It's not hearsay; it's not argumentative; it's not
16 assumption. It is actual facts. And I will be glad to submit
17 this as evidence of my allegation, and I will challenge this man
18 in court any day of the year because of what he stands for. The
19 principles of Sedgwick, Detert, Moran and Arnold are for the
20 defendants; they are not for the workers.

21 According to Steve Cooney, the President Pro Tem for
22 Senator Dave Roberti, he received 50,000 complaints a year, and
23 that's only about 10 percent, which means there are over 250,000
24 Californians injured every year.

25 The company that is taking -- Aetna Insurance Company
26 right now, who's handling the case, Sedgwick, Detert, Moran and
27 Arnold are their attorneys. They owe me roughly \$32,000 in back
28

1 wages; they have violated the rules of reconsideration which was
2 granted on July 13th, 1981. It was supposed to be acted upon in
3 30 days. It has not been acted upon.

4 I received a beautiful letter from this Commissioner,
5 Mr. Richard Younkin, saying: Don't worry about it; the judge is
6 acting expeditiously.

7 The judge has not acted at all in three years. I have
8 had my medical files pulled at the level of the Workers'
9 Compensation Appeals Board. I've had my x-rays destroyed.
10 Anything detrimental to Sedgwick, Deter, Moran and Arnold's case
11 has been either pulled or destroyed at some time or another.

12 I can document this; it's all actual facts, not only
13 written by me but by the judge himself.

14 SENATOR MELLO: I'd like to ask you a couple questions.
15 Are you represented by an attorney?

16 MR. MALDONADO: Yes, I am.

17 SENATOR MELLO: What is your attorney doing for you on
18 your behalf?

19 MR. MALDONADO: My attorney has written letter after
20 letter. He has called after call, and he has receiving nothing.

21 The Chairman of the Board is over these judges. The
22 Chairman of the Board is over Mr. Jim Wisilowski, who is handling
23 the case for Sedgwick, Detert, Moran and Arnold. He has
24 committed three offenses that should have been cited for contempt
25 of court. He has not; why?

26 Somebody above them is telling the judge: Don't bother;
27 don't worry; we'll take care of it. Now I'd like to know why.
28

1 SENATOR MELLO: I get calls. I'll just speak for a
2 second now, the Vice-Chairman has returned.

3 This hearing here is really to evaluate and question
4 Mr. Taylor, you seem to have a personal experience that you have
5 every right to present here before the Rules Committee.

6 Being a Legislator and former County Supervisor, I've
7 had people that would come and indicate problems they're having
8 with the Workers' Compensation Board, but I've always referred
9 them to counsel, where they've gone ahead and pursued their
10 rights without hassle.

11 If your attorney hasn't gotten you a response to a
12 letter in three years, my guess is there's something wrong with
13 your attorney. I don't know who it might be, but I think, Mr.
14 Chairman --

15 MR. MALDONADO: We have done that. We have followed the
16 rules of the Workers' Compensation. This is what I mean about
17 it's not the rules; it's the people who administer it.

18 We have disqualified the judge under the rules. We have
19 appealed to the Chairman of the Board, who has done nothing.

20 SENATOR MELLO: I think Mr. Taylor ought to be given a
21 chance to respond to these charges here.

22 MR. TAYLOR: Thank you, Senator Mello.

23 I won't attempt to respond to the characterization of my
24 former law firm. I think it would be inappropriate for me to do
25 so.

26 I was given the information that this gentleman might
27 appear in opposition. I therefore inquired of my former firm to
28

1 determine whether I'd ever had any dealings with this particular
2 claimant in this case. I had not.

3 It is my policy and the policy of the Board, of course,
4 not to become involved in any case that would have involved my
5 former law firm in order not to create a conflict. As a judicial
6 officer I must follow judicial conduct rules.

7 Mr. Younkin, who is here present, and as Deputy and
8 Secretary to the Appeals Board, did in fact respond to
9 correspondence to this claimant, as is his charge.

10 I have not attempted to familiarize myself with this
11 gentleman's claim. I think it would be inappropriate for me as a
12 judicial officer to do so.

13 Therefore, I would welcome any inquiry of the
14 particulars in this file to Mr. Younkin, who's here present, or
15 who would be happy to reply in writing. I don't want to put him
16 on the spot, but I think that this Committee should have whatever
17 facts they need to know about the status of this gentleman's
18 case, if they feel it relevant to their evaluation of me as a
19 candidate for this office.

20 SENATOR MELLO: While he was making one of the
21 allegations, I was thinking in my mind that you, as a
22 Commissioner, perhaps don't feel like you should comment in case
23 it may be before you at some point.

24 My question to you, though, is: What recourse does a
25 person like him have, who feels his letters are not being
26 responded to and he's not getting his case properly, and he
27 requires, according to his testimony, the doctors claim he needs
28

1 an operation? What recourse does he have in order to appeal or
2 get his case properly before your Board?

3 MR. TAYLOR: It would depend on the status of his case,
4 but of course his first procedure should be to work with his
5 attorney. This is a judicial process, and he is the legal
6 representative.

7 I have not been made aware of any circumstances where
8 the Board hasn't responded appropriately to any motions,
9 complaints, or any other aspect of this gentleman's case. If I,
10 as Chairman, were made aware of them, I would certainly bring
11 them to the attention of those persons to whom this case is
12 assigned. This case will not be assigned to me for conflict
13 reasons. It will be assigned and has been assigned, as I under-
14 stand, to other panel members to dispose of the case for them.

15 The current status of this case is difficult for me to
16 describe in particular because of my position in this matter. I
17 understand, however, that a recent petition was denied, and the
18 matter has been referred back to the calendar in the local office
19 in Fresno, where it very appropriately lies for venue purposes at
20 this time.

21 SENATOR MELLO: Mr. Chairman, this is Mr. Taylor we're
22 considering, and Mr. Maldonado is a witness testifying in
23 opposition to his confirmation. And we've heard his testimony.

24 Did you have anything further to say, Mr. Maldonado?

25 MR. MALDONADO: Yes.

26 Mr. Taylor, who dictates policy at Sedgwick, Detert,
27 Moran and Arnold? I understand you're senior partner there.
28

1 MR. TAYLOR: Well, you know, I'm not here for cross
2 examination.

3 SENATOR MELLO: You should address your questions to
4 Senator Roberti, the Chair, and not the witness.

5 CHAIRMAN ROBERTI: Yes, please address the question to
6 me and then I'll --

7 MR. MALDONADO: I'm sorry, sir. I'm not used to this
8 protocol.

9 CHAIRMAN ROBERTI: Please ask your question one more
10 time.

11 MR. MALDONADO: I would like to know who dictates policy
12 at Sedgwick, Detert, Moran and Arnold? This is the law firm in
13 which Mr. Taylor is affiliated.

14 MR. TAYLOR: May I clarify that. I'm no longer
15 affiliated with that firm.

16 CHAIRMAN ROBERTI: At what time did that take place?
17 When did you cease your affiliation with that firm?

18 MR. TAYLOR: It's a two-step phase. I was the senior
19 partner in the firm until 1980, at which time I withdrew. I then
20 had no proprietary interest whatsoever in the firm, became of
21 counsel and worked on a contractual basis with them until
22 appointment.

23 CHAIRMAN ROBERTI: I take it from that point on you were
24 only remunerated for those?

25 MR. TAYLOR: I only received remuneration for the
26 efforts that I made towards particular cases. I had no
27 partnership policy-making function.
28

1 CHAIRMAN ROBERTI: Senator Petris.

2 SENATOR PETRIS: Unfortunately we get complaints of this
3 kind from time to time about agencies, and out of desperation
4 people come in to block an appointment in order to see that
5 something can be done.

6 Now, I'm frankly very concerned by what Mr. Maldonado
7 has told us. He tells us the doctors says he's going to be
8 paralyzed from the waist down. He's got a judge, apparently,
9 that's been sitting on this case for three years, and another
10 judge that tells him: Don't worry about it; it'll be heard
11 expeditiously.

12 I'm concerned about that. It seems to me that although
13 this may not be the forum for solving his problem, we ought to
14 ask somebody to get on this thing right away. If his facts are
15 totally wrong, I want to know it; if they're not wrong, I can't
16 stand by and let a man go on to paralysis because I didn't even
17 ask a question in the right place.

18 MR. TAYLOR: Senator Petris, perhaps we can answer some
19 of your questions now.

20 SENATOR PETRIS: I'd like to find out.

21 MR. TAYLOR: Mr. Richard Younkin is here present, and I
22 asked him to bring the file.

23 SENATOR PETRIS: Mr. Chairman, can we at least ask him
24 -- we don't want to open this whole case and try it here, but I'd
25 like to know whether or not somebody's been sitting on it for
26 three years. I'd like to know if there are five separate medical
27 files missing from his file, or medical reports. I'd like to
28 know the answers to three or four of the questions he's raised.

1 If Mr. Younkin can provide those answers, it would be
2 very helpful.

3 Maybe separate and apart from this hearing we can make
4 some inquiries.

5 MR. MALDONADO: Senator Petris, anything that I state, I
6 can show you in documentation, in writing, everything.

7 SENATOR PETRIS: Mr. Maldonado, you told us about the
8 600 pages --

9 MR. MALDONADO: No, this was the book that was sent to
10 Senator Roberti, and apparently he hasn't received it yet, and I
11 don't know why.

12 CHAIRMAN ROBERTI: We haven't received it, no.

13 MR. MALDONADO: I will gladly leave this copy here.

14 CHAIRMAN ROBERTI: Wait a second, Mr. Younkin is here to
15 answer Mr. Maldonado's questions.

16 Mr. Younkin.

17 MR. YOUNKIN: May it please the Chairman and the
18 Committee, I'm Richard W. Younkin, Secretary and Deputy
19 Commissioner for the Workers' Compensation Appeals Board.

20 I had an occasion to review this rather massive file. I
21 have a small portion for the facts that are necessary your
22 questions, Senator.

23 This matter has not been sitting on the judge's desk
24 idly for three years. Mr. Maldonado originally filed his claim
25 in October of 1977. It was set for hearing initially in November
26 of 1977. At that time there was an agreement made to pay
27 temporary disability pending the receipt of a medical report.
28

1 Later down the line, in 1978, another hearing was held,
2 and there was an order for his temporary disability indemnity at
3 that point in time in 1978.

4 Mr. Maldonado substituted his attorney, and I might say
5 in answer to Senator Mello's question, there have been competent
6 counsel in this case representing Mr. Maldonado. He's had four
7 qualified and very competent counsel who are specialists in
8 workers' compensation to represent him throughout the period of
9 this case.

10 There was a continuing award of temporary disability,
11 and down the line, in about 1980, proceedings were reinstituted
12 before the Board by the Defendants because this is a very
13 complicated case. It involves the liability between two
14 insurance carriers on two different injuries; it involves
15 apportionment to pre-existing disability.

16 I don't want to comment too much on the specific facts
17 and in any way intrude into the judicial function of the judge,
18 because the case is still before the judge.

19 Procedurally, the case progressed at every point in
20 every way that the Board can make it go. There were several
21 continuances requested by Applicant's counsel, and requested for
22 good cause because of not being ready with medical reports and
23 medical exams. There were changes of counsel which required
24 putting off of hearings and delay of hearings.

25 At any rate, the case proceeded to Fresno, where it was
26 first heard by the judge in 1983, I believe, March of '83. And
27 the first thing was a conference calendar in January of '83. It
28

1 was expedited to a trial calendar in March of '83. Two hearings
2 followed from that point. Testimony was taken at each hearing.
3 More medical evidence was submitted. All the medical records
4 that we know of that exist were submitted and are in the file;
5 although we have received numerous ex parte letters from Mr.
6 Maldonado, almost all of those have been referred properly to the
7 presiding judge, to his counsel, satisfying inquiries about the
8 status of the case.

9 The Workers' Compensation judge referred the case to two
10 independent medical examiners in two specialities. There was a
11 conflict in the medical as to the exact nature of the disability
12 and the extent of the disability of Mr. Maldonado.

13 The case was pending before a Workers' Compensation
14 judge and proceeding to a conclusion when a petition for
15 disqualification was filed by Mr. Maldonado in pro per.

16 Under the Board rules and under the Labor Code and the
17 rules that the Board has drafted, when a petition for
18 disqualification is filed, it is sent to the Board and the panel
19 members must rule on that disqualification. Unfortunately, that
20 was a delay in the proceedings, coming to the Board to decide
21 that issue.

22 But in the meantime, the judge handling the case had
23 proceeded expeditiously to obtain the medical evidence to get the
24 case submitted.

25 The panel of the Board denied the petition for
26 disqualification on the technicality, which was a proper
27 interpretation of the Labor Code. Under our rules, a petition
28

1 for disqualification must be filed before the taking of testimony
2 of the first witness. This was filed in the middle of the
3 proceedings.

4 Any problems with the judge's handling of the case can
5 be properly raised by a petition for reconsideration from his
6 decision.

7 I have maintained the file for a day so that I could
8 have the information for this Committee. Where the file stands
9 now is, it is to be referred back to the presiding Workers'
10 Compensation judge to be given to the judge, who will make an
11 expeditious decision in the matter.

12 SENATOR PETRIS: What does that mean normally? Is that
13 within 90 days?

14 MR. YOUNKIN: I would hope it's within 30 days, Senator.
15 The 90-day period -- I have tried to find out how that 90-day
16 period came into existence. There is a Labor Code which says a
17 Workers' Comp. judge loses his or her pay if he fails to get a
18 decision out in 90 days. But the standard is not 90 days. The
19 standard is 30 days. And I have been --

20 SENATOR PETRIS: Is it one we can rely on? Is it fairly
21 closely followed?

22 MR. YOUNKIN: I would say in this particular case it is
23 probably more closely followed, but I would say in most cases we
24 find -- I'm not sure. I don't have the Auditor General's report.
25 In it, it had a --

26 SENATOR PETRIS: The Auditor General said 95 percent go
27 past the 30 days.
28

1 MR. YOUNKIN: It's between 30 and 60. And if it's a
2 complicated case, sometimes it takes a great deal of time to get
3 it. But that many cases do not go to 90 days. And when we have
4 cases like this, where we have received complaints, we make every
5 attempt, without giving priority over other workers, to make an
6 attempt to expedite them. We have at every stage of these
7 proceedings attempted to do that.

8 Most of the delay process which appears in this case is
9 from the attorneys in asking for continuances, in making motions,
10 and this is an adversary proceeding. And one of the difficulties
11 of it is due process must be given.

12 SENATOR PETRIS: Is there an attorney of record now?

13 MR. YOUNKIN: Yes, there is an attorney of record now.

14 SENATOR PETRIS: Thank you.

15 SENATOR MELLO: Mr. Chairman, may I pursue?

16 CHAIRMAN ROBERTI: Yes, Senator Mello.

17 SENATOR MELLO: Your name again?

18 MR. YOUNKIN: My name is Richard W. Younkin.

19 SENATOR MELLO: I'm trying to trace back, the date of
20 entry was 1977?

21 MR. YOUNKIN: That is correct, sir.

22 SENATOR MELLO: And his first hearing in court was then
23 in March of 1983?

24 MR. YOUNKIN: Excuse me, no. His first hearing was
25 November 17, 1977. His application was filed on October 6th,
26 1977; a hearing was held on November 17, 1977.

1 One must remember that these cases proceed at different
2 stages of the injured worker's disability. Mr. Maldonado did
3 have back surgery, and he becomes to a point where he is
4 temporarily totally disabled, and his condition is not permanent
5 and stationary. And in these types of cases it does take an
6 extended period of time before you get to a point that there
7 might be a determination of his permanent disability. And any
8 gaps in time are primarily due to this period of time where he
9 was receiving temporary disability indemnity under an order from
10 the Board. And the further hearings in 1983 were for the further
11 proceedings on issues which were premature at the original
12 hearing.

13 SENATOR MELLO: During '77 and '83, that's six years,
14 you were just evaluating his status?

15 MR. YOUNKIN: The medical doctors were treating
16 Mr. Maldonado, and they were evaluating his status during that
17 period of time. His status as of -- in 1978, a findings and
18 award issued from the Workers' Compensation Appeals Board
19 awarding him temporary disability indemnity continuing until his
20 disability -- temporary disability ceased.

21 SENATOR MELLO: Has he received disability payments
22 during this period of time for his own subsistence for his and
23 his family?

24 MR. YOUNKIN: He received it up to a point in time where
25 the Defendants petitioned to terminate those benefits because
26 their medical doctors indicated his medical condition was no
27 longer temporarily disabled.
28

1 SENATOR MELLO: What about his medical bills? Have
2 those all been paid?

3 MR. YOUNKIN: There are issues pending on medical bills.
4 Again, Senator, this is an adversary system, and the Defendants
5 have medical evidence, apparently, and again, if I get into the
6 evidence in the file I think that would be improper.

7 SENATOR MELLO: I don't want to get into specifics, but
8 what I'm hearing here is a case that I think represents quite a
9 number, far too many, as far as I'm concerned. People are
10 injured, and it seems like, the inference I have, first of all
11 it's disability payments subsistence for them and their family,
12 and that takes some time. Then the medical payments, and then
13 the liens get placed against them. And it seems like I ask
14 myself: Are we responsible in the State of California? We seem
15 to be administering the laws in this state, and the Workers'
16 Compensation insurance fund the employers out there certainly are
17 paying a big price. I'm saying that as an employer myself paying
18 insurance.

19 I guess the question is: What takes so long for some-
20 thing like this to really get resolved? Is it his fault because
21 he keeps delaying? I'm sure he's not delaying it; he wants to
22 get this resolved because of the hardships on his part.

23 MR. YOUNKIN: I think the only way I can answer that is,
24 there are a multitude of problems in this case, and a portion of
25 it is in unilateral contact. But more important, there is
26 conflicting evidence on exactly what the issues are. And there's
27 a litigation process which is being followed by the attorneys who
28 are doing their jobs to represent their clients.



1 If this were a clear-cut case, where the liability was
2 very clear in all matters, it would have been decided a long time
3 ago. But it's not a clear-cut case. And the Board has a
4 mandate, statutory mandate, to develop the record and make sure
5 that they have adequate evidence which will hold up, which will
6 make the proceedings come to an end as soon as possible.

7 The Workers' Compensation judge has made every effort to
8 do that.

9 SENATOR MELLO: The only thing I would find, usually
10 it's the injured worker cannot hold out as long as the fund or
11 the Workers' Compensation or others that can hold out. And they
12 need some immediate type of help, either --

13 SENATOR CRAVEN: May I, Mr. Chairman, comment?

14 CHAIRMAN ROBERTI: Senator Mello, have you finished your
15 questioning?

16 SENATOR MELLO: Just for the record, I've been an
17 employer for 35 years, as well as a County Supervisor. I've had
18 some experience with employees.

19 We're really hearing Mr. Taylor's confirmation here.
20 This has sort of become a sidelight, but it's an interesting
21 sidelight mainly because of the plight that the injured worker
22 goes through, you know, to arrive at this scene is really
23 something. I have great sympathy for it.

24 If he's holding up the system through his own
25 maneuvering, then I don't sympathize with him at all. But I
26 would like to see my role in government expedite the process so
27 that injured workers get fair treatment and get it quickly and
28

1 expeditiously to the fullest extent possible. That's all I'm
2 saying and I will close with that.

3 CHAIRMAN ROBERTI: Thank you. Senator Craven.

4 SENATOR CRAVEN: I'll start off by saying, Mr. Chairman,
5 that I was fully prepared to have you come up here and stumble
6 all over yourself and exhibit all the deficiencies of the
7 bureaucratic system. I'll say further that you didn't do that at
8 all, that I thought that your approach to this thing was very
9 reasonable, very logical, and I thought extremely clear.

10 I was very willing, as I think most people either
11 looking at or listening to Mr. Maldonado and his plethora of
12 exhibits there, your heart goes out to him. But I think so much
13 of what Mr. Maldonado has experienced is perhaps not necessarily
14 his fault, but the fault or the action of counsel which he has
15 retained.

16 I don't think that I would be correct in assuming that
17 during the period of time in which he's been engaged in this,
18 since 1977, that he has been bereft of help. He has, according
19 to my understanding of your remarks, drawn some compensation
20 during this period of illness, has he not?

21 MR. YOUNKIN: That is correct, sir.

22 SENATOR CRAVEN: So, it isn't that we have in effect
23 shunned him. I would understand his frustration with the system,
24 but I think, too, perhaps to some degree it may well have been
25 brought on by those people who are in a position and whom he has
26 obviously obtained to advise him.

1 All of that, I think, is something a little beyond the
2 Rules hearing. I would agree with my colleague, Senator Mello,
3 that I don't know that this is necessarily applicable to the
4 confirmation of Mr. Taylor. And I see no reason to put the
5 albatross necessarily on Mr. Taylor's neck and over his shoulder.

6 CHAIRMAN ROBERTI: Thank you, Senator.

7 Mr. Maldonado.

8 MR. MALDONADO: Senator Craven, you said that Mr.
9 Younkin here handled everything right, but --

10 SENATOR CRAVEN: No, I didn't say that, but --

11 MR. MALDONADO: What he didn't do is that he left out
12 the most vital important thing. For one, on October 24th, 1978,
13 at a hearing, I was awarded \$154 a week, which constitutes \$22 a
14 day. They were ordered to pay me from March 30th, 1978 to the
15 present, which would be October 24th.

16 Sedgwick, Detert, Moran and Arnold sent me the checks,
17 they had their check, and it was only for half of that award. I
18 have been since then, since 1978, trying to get the \$1849 they
19 owed me. They still have not done that.

20 Mr. Younkin has failed to tell you that my temporary
21 disability was stopped in 1980. He also failed to tell you that
22 my rehabilitation, which I tried myself to do, was completely --
23 went haywire because of their inability to afford me medical
24 treatment.

25 The law is very plain. I am supposed to get medical
26 treatment as mandated by law. Nothing changes that. I have not
27 been given medical treatment mandated by law.
28

1 SENATOR CRAVEN: I can't, of course, begin to rebut some
2 of the contentions that you've made; however, it was my
3 understanding that a certain sever was made of the payments due
4 to the basis that you didn't want to proceed on a temporary
5 category or classification, and presumably were seeking to be
6 declared permanently disabled.

7 So, if there was in fact some stop, it may well have
8 been as a result of an action filed by your counsel.

9 MR. MALDONADO: No, it was not. It was -- my payments
10 have been stopped five times. One time by a fictitious doctor
11 who did not even exist. And when they wanted that doctor's
12 signature, they couldn't find the file, and they couldn't find
13 the doctor's signature, and they couldn't remember who it was.

14 SENATOR CRAVEN: There are many nuances of it, and let
15 me just stipulate to what you say as being correct. How's that?

16 What I want to find out is, why is all of this
17 Mr. Taylor's fault?

18 MR. MALDONADO: His mode of operandi is showing. This
19 man shows that he has lead this company for 20-some odd years,
20 and he shows exactly what he's doing. The man --

21 SENATOR CRAVEN: You mean the firm of attorneys?

22 MR. MALDONADO: Yes, the firm of attorneys.

23 SENATOR CRAVEN: From which he has been severed for four
24 years.

25 MR. MALDONADO: He has been the Defendant for that
26 insurance company for God knows how long, and therefore favors
27 that. He shows that.
28

1 His men have been sitting there, and he has been
2 flagrantly abusing the Workers' Compensation laws, committing
3 acts of fraud time and time again. And they are sitting there,
4 and nobody does anything about it. You appeal to the higher ups,
5 their boss, which is in Workers' Compensation, and they do
6 nothing.

7 Mr. Younkin sent me a letter saying that they are
8 working expeditiously. I would like you to read and take the
9 time to read this February 3rd letter, which he actually states
10 in his letter where I have admitted and have written 35
11 violations which the judge has committed. And he says he's
12 working expeditiously.

13 I will also show you a letter of recommendation, a
14 reconsideration that was granted by Mr. Younkin on April 13th,
15 1981, that should have been acted upon in 30 days, and it has
16 still not been acted upon.

17 I would also like to say that Mr. Younkin said that I
18 was acting pro tem in regards to the disqualification of the
19 judge is complete fabrication, and I can prove it right here.
20 The judge said that there was no signature of my attorney. Here
21 is my attorney's signature, which means that --

22 SENATOR CRAVEN: Well, Mr. Maldonado --

23 MR. MALDONADO: -- wait a minute, I'm not finished,
24 please.

25 SENATOR CRAVEN: We can't be trying your case here. And
26 like most laymen who get familiar with the law, it becomes a very
27 dangerous thing.
28

1 Frankly, I respect your opinions. I do not agree with
2 them as it relates to the confirmation of Mr. Taylor.

3 MR. MALDONADO: Because you haven't read the facts of
4 the allegations. I'd like to see you bake a cake without the
5 ingredients. You cannot, Senator. You cannot possibly make a
6 decision without knowing the facts. That would be prejudicious.

7 Anybody who would make a decision about somebody whose
8 mode of operandi for the last 20 years is shown right here in
9 writing refuses to look at them, it's pathetic.

10 Senator Roberti, I would like to let you read this. I
11 would ask for a Senatorial investigation as to the background of
12 this company, which this man has lead, which means that he would
13 lead Workers' Compensation, and hold off your decision on his
14 appointment.

15 CHAIRMAN ROBERTI: I will not delay a vote today on
16 Mr. Taylor's confirmation. We always wait two weeks on the
17 Floor. And you can be sure that if you give me your file to
18 read, I will read it.

19 In hearing the issues involved, I do not feel that
20 Mr. Taylor, acting as the attorney, has not done anything that a
21 client would expect his attorney representing him to do.

22 Unfortunately, it's part of the way law is practiced in
23 an adversary setting; that is that the advocate is expected to be
24 just that and to represent his client vigorously before the Board
25 and before the court.

26 So I will, however, read your file. And certainly if
27 there is a problem, I will bring it to the attention of my
28 colleagues.

1 Thank you very much, Mr. Younkin, for coming forward.

2 Any other questions?

3 MR. MALDONADO: I have a letter here that was addressed
4 to Mr. Gordon Taylor.

5 CHAIRMAN ROBERTI: *Give that to Ms. Michel and you can
6 be sure I will read it.

7 Mr. Taylor, would you like to conclude?

8 MR. TAYLOR: I can only say that I will continue my
9 charges as both a lawyer and now as an appointee of the Governor
10 to follow the law, which includes expeditious handling of
11 Workers' Compensation cases.

12 CHAIRMAN ROBERTI: Thank you, Mr. Taylor.

13 Is there anybody else wishing to testify on this matter?
14 Seeing none, is there a motion?

15 SENATOR CRAVEN: I would move the confirmation of
16 Mr. Taylor.

17 CHAIRMAN ROBERTI: Senator Craven moves confirmation of
18 Mr. Taylor be recommended to the Floor. The Secretary will call
19 the roll.

20 SECRETARY WEBB: Senator Craven.

21 SENATOR CRAVEN: Aye.

22 SECRETARY WEBB: Senator Mello.

23 SENATOR MELLO: Aye.

24 SECRETARY WEBB: Senator Petris. Senator Johnson.
25 Senator Roberti.

26 CHAIRMAN ROBERTI: Aye.
27
28

1 The vote is three to nothing, however Senator Mello
2 moves the roll be kept open so Senator Johnson can register his
3 vote. Without objection such will be the order.

4 Senator Mello moves that the call of Ms. Lazar be
5 lifted. The Secretary will call the roll.

6 SECRETARY WEBB: Senator Johnson. Senator Roberti.

7 CHAIRMAN ROBERTI: Aye. The vote is four to nothing,
8 confirmation's recommended to the Floor.

9 SENATOR CRAVEN: Mr. Chairman, am I correct in that the
10 Chairman advised Mr. Maldonado to submit those documents which he
11 feels appropriate to his case for the review of the President Pro
12 Tem and for his examination, and then later to send to other
13 members of the Committee?

14 CHAIRMAN ROBERTI: Yes, absolutely.

15 SENATOR CRAVEN: Very well. Hopefully that will in some
16 way assuage your feeling.

17 MR. MALDONADO: Senator, I just feel that a man who
18 leads his company into committing fraud will also do the same
19 thing as the head of Workers' Compensation Appeals Board. He
20 showed me that in the last three months that he has not helped
21 it. I have written Marilyn Lazar, the letter's in here; she has
22 done nothing.

23 They're on an autonomistic pedestal, and only you have
24 the power to stop this from getting to be a cancerous spread.

25 SENATOR CRAVEN: I think all of us understand your
26 involvement in it, which is not only physical but emotional in
27 many ways. But the Chairman of this Committee, who is himself an
28

1 attorney, as well as Senator Petris, who is also an attorney, are
2 in a better position to pass judgment on the efficacy of your
3 statements than those of us who are laymen. We depend upon them,
4 and will in the future as we have in the past, to give us that
5 information which they deem appropriate, and hopefully that will
6 serve to indicate to you that the Chairman and his members do
7 have in fact an interest in your statements.

8 MR. MALDONADO: Like I said, God help 250,000 people in
9 California every year.

10 CHAIRMAN ROBERTI: Senator Craven moves that the call on
11 Mr. Swezey be lifted. Secretary will call the roll.

12 SECRETARY WEBB: Senator Johnson. Senator Roberti.

13 SENATOR ROBERTI: Aye. The vote is four to nothing,
14 confirmation's recommended to the Floor.

15 SENATOR MELLO: I'll move those not scheduled to appear.

16 CHAIRMAN ROBERTI: Senator Mello moves the vote of those
17 not scheduled to appear be confirmed. They are: Donald F.
18 Driscoll, Member of the California Regional Water Quality Control
19 Board, Central Coast Region; I.G. Popoff, Member of the
20 California Regional Water Quality Control Board, Lahontan Region;
21 Dale Sare, Member of the California Regional Water Quality
22 Control Board, Lahontan Region; Mr. James Grossman, Member of the
23 California Regional Water Quality Control Board, Los Angeles
24 Region; Mr. Jack R. Witz, Member of the California Regional Water
25 Quality Control Board, Los Angeles Region.

26 Any discussion, debate? Any objection?
27
28

1 Senator Mello has moved, and the Secretary will call the
2 roll.

3 SECRETARY WEBB: Senator Craven.

4 SENATOR CRAVEN: Aye.

5 SECRETARY WEBB: Senator Mello.

6 SENATOR MELLO: Aye.

7 SECRETARY WEBB: Senator Petris. Senator Johnson.
8 Senator Roberti.

9 CHAIRMAN ROBERTI: Aye.

10 The vote is three to nothing, confirmations are
11 recommended to the Floor.

12 (Thereupon this portion of the Senate
13 Rules hearing was concluded at approx-
14 imately 3:30 P.M.. Thereafter the call
15 was lifted on the confirmation of
16 Mr. C. Gordon Taylor, and Senator Petris
17 voted "aye", with Senator Johnson still
18 absent. The final vote on Taylor was
19 4-0 do pass to the Floor.)

20 --oo0oo--
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:


That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

25th

day of May, 1984.


EVELYN MIZAK
Shorthand Reporter

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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

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1 HEARING

2 SENATE RULES COMMITTEE

3 STATE OF CALIFORNIA

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10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

13
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15
16 WEDNESDAY, JUNE 6, 1984

17 1:30 P.M.

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25 Reported by:

26 Evelyn Mizak
27 Shorthand Reporter
28

MEMBERS PRESENT

Senator David Roberti, Chairman

Senator Ray Johnson, Vice-Chairman

Senator William Craven

Senator Henry Mello

MEMBERS ABSENT

Senator Nicholas Petris

STAFF PRESENT

Pat Webb, Committee Secretary

Rick Rollens, Consultant

Nancy Michel, Consultant

Bruce Samuel, Assistant to Senate Rules Committee

GOVERNOR'S APPOINTEES REQUIRED TO APPEAR

WAYNE ESTELLE, Warden

California State Prison at San Luis Obispo

REGINALD PUILLEY, Superintendent,
California State Prison at San Diego

DANIEL B. VASQUEZ, Warden,
California State Prison at San Quentin

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Proceedings

1

Governor's Appointees Required to Appear

WAYNE ESTELLE, Warden,
California State Prison at San Luis Obispo

1

Questions

2

Motion

6

Committee Action

7

Final Action

12

REGINALD PULLEY, Superintendent,
California State Prison at San Diego

7

Questions

8

Motion

11

Committee Action

11

DANIEL B. VASQUEZ, Warden,
California State Prison at San Quentin

12

Motion

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Committee Action

13

Termination of Confirmation Proceedings

13

Certificate of Reporter

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P R O C E E D I N G S

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VICE-CHAIRMAN JOHNSON: Now we proceed with Wayne Estelle, Warden, California State Prison, San Luis Obispo.

Is that correct, Estelle?

MR. ESTELLE: Yes, sir.

VICE-CHAIRMAN JOHNSON: Could you give us something about yourself; why you think you're the person for the job?

MR. ESTELLE: Basically, I like to feel that everything I've done up to this time has prepared me for the assignment at CMC.

I started at Folsom as a correctional officer and worked through the ranks of sergeant, and a parole agent here in Sacramento, back to the institutions as a lieutenant. I was on special assignment in Arizona as a deputy director, where during that period we planned and opened up two facilities, one adult and one juvenile, including preparing the enabling legislation, preparing a budget, establishing positions, identifying the positions, recruiting and hiring the people, and putting the facilities into operation.

Then I returned to California and was appointed as Captain of the California Men's Colony, and then went on as Program Administrator at that facility, and then worked for seven years under Ray Brown as a Hearing Representative with the Board of Prison Terms.

Then I had the fortune of being appointed as the Deputy Superintendent for Dan McCarthy at California Men's Colony.

1 Understanding his philosophy and approach as being one of the
2 soundest in the State, I was again fortunate enough to be blessed
3 with replacing himself after he was appointed as Director of the
4 Department of Corrections.

5 I also feel, as the Senator I hope would agree, you need
6 a sense of humor in this business; I hope I carry that.

7 VICE-CHAIRMAN JOHNSON: Any questions by Members of the
8 Committee? Senator Mello.

9 SENATOR MELLO: I think maybe at times you need more
10 than a sense of humor. This is probably one of the toughest jobs
11 in the whole State, trying to administer our institutions because
12 of the double celling and, you know, the problems contained
13 therein.

14 I just have a couple of brief questions. I interested
15 in the Arts in Prison program. We have here in the Capitol a
16 display of prison art that has been here now and will be here for
17 about a month.

18 How do you evaluate the program, number one. And number
19 two, will there be space available on an ongoing basis to make
20 sure that the art program in prisons can continue in CMC?

21 MR. ESTELLE: Given that we don't get cursed with too
22 many inmates, yes, there will.

23 We have two full-time people working in arts in
24 Corrections, and about ten or eleven other volunteer people
25 coming in and working in that program.

26 We've involved about 150 prisoners in the past year,
27 working part-time in that program as an activity, and some of the
28

1 murals we have around the institution, which I consider of very
2 high quality and I hope you'll have a chance to come down and see
3 them along with the rest of the institution, have given a break
4 in the design of the institution setting.

5 SENATOR MELLO: How do you evaluate the program towards
6 the behavior of the inmates themselves?

7 MR. ESTELLE: The first criteria I'm looking for is to
8 keep inmates occupied in a positive program and to show them that
9 there are places to go to spend their efforts and energies in a
10 more profitable return than what they've been doing before they
11 went to prison.

12 In that sense, yes. And it's one of the other doors
13 that we want to make available, visibly available, to the inmates
14 on vocational, avocational, education and work habits. And in
15 that sense, yes, it's been productive to show them their other
16 avenues to spend their energies.

17 SENATOR MELLO: Another question dealing with the MDSOs,
18 when legislation came about I think a year or two ago that
19 discontinued the program at Atascadero and other areas of the
20 State. They are now folded right into the mainstream of our
21 correctional facilities.

22 Are you able at your facility to give some type of
23 counseling and help in trying to turn around the behavior of the
24 mentally disordered sex offenders that are now sent to your
25 facility?

26 MR. ESTELLE: With double celling, we have one unit that
27 is excluded from double celling; that's Delta Quad. CMC has four
28

1 units, or what we call quads. One of those quads is D Quad,
2 which is designated for the treatment, housing of people who have
3 emotional and psychiatric needs, including sex offenders.

4 CMC has six psychiatrists and six psychologists, and the
5 regular cadre of counselors, a good portion of which is
6 addressing that problem.

7 I won't promise anybody as to the success rate in
8 treating those problems, but if there is to be a success rate,
9 and I'm a firm believer that we have to make that effort, we do
10 have the staff, and we have the facilities to do it. We have
11 access to Atascadero State Hospital, which is nearby. We utilize
12 that frequently through the 2684 P.C. program. And we try to
13 find the slot as to whether the individual would be best suited
14 to the program at Atascadero or CMC.

15 I'm satisfied that CMC has a program that will compare
16 favorably to any other in this State or in the country.

17 SENATOR MELLO: Will you be monitoring these persons as
18 they are released from the institution to see whether or not
19 programs provided for them had a deterrent factor, or whether or
20 not it did not, or what would be the recidivism rate of MDSOs as
21 they are allowed to flow back into society?

22 MR. ESTELLE: That monitoring is typically done by
23 Parole and Community Services. And the Department does keep
24 statistics on over-all recidivism rate, and of course a
25 measurement of recidivism is who's doing the measuring and under
26 what criteria.
27
28

1 I would defer to the departmental statistical division,
2 data processing.

3 SENATOR MELLO: Is there more that you think we can be
4 doing for the counseling and treatment of the MDSOs now that
5 they're in your facility that we are not doing? Or do you think
6 are services are adequate?

7 MR. ESTELLE: I don't know that you can ever say that
8 they're adequate enough. If I had some information available, or
9 knowledge available that could assure successful treatment, I
10 wouldn't be working for the Department of Corrections; I'd be
11 hiring out to the Legislature as a consultant.

12 But we're -- as I say, I think given the known treatment
13 services, that CMC is providing any that would compare in the
14 country, in the nation, in a public agency.

15 SENATOR MELLO: I see you're about 30 percent
16 overcrowded right now. Is that all in double celling?

17 MR. ESTELLE: Yes, it is. We had to make a choice as to
18 convert other areas of the institution into housing and detract
19 from services available. Given the size of the cells, we weren't
20 excited about double celling, but we thought it was a better
21 choice than to detract from the other services.

22 SENATOR MELLO: Will the 900 cells that are now being
23 added to your facility, will that bring about the elimination of
24 double celling, or will you still have to carry on some double
25 celling when that's completed?

26 MR. ESTELLE: No, the West Facility, which by the way is
27 one of the few that's on line and on schedule and within budget,
28

1 they are doing a good job over there, but that is a Level I and
2 Level II facility. The essential need is for Level III and
3 Level IV. CMC being a Level III institution also accommodating a
4 number of Level IVs, will continue to have to double cell that
5 level of custody.

6 SENATOR MELLO: Will this recent bond issue help that
7 was passed yesterday?

8 MR. ESTELLE: I certainly hope so, Senator.

9 SENATOR MELLO: Okay. No further questions.

10 I'm familiar with the facility. The facility is in the
11 district that I technically represent along with Senator Maddy.

12 Both Director McCarthy and you and the management down
13 there really, I think, have been exceptionally favorable and
14 positive, and done a good job.

15 MR. ESTELLE: Thank you, Senator.

16 VICE-CHAIRMAN JOHNSON: Mr. Craven, you had a question?

17 SENATOR CRAVEN: No, sir. I was ready to make a motion.

18 VICE-CHAIRMAN JOHNSON: Is there any opposition to this
19 gentleman?

20 SENATOR CRAVEN: There being none, Mr. Chairman, I would
21 move the confirmation of Mr. Estelle to the Floor.

22 VICE-CHAIRMAN JOHNSON: Secretary will please call the
23 roll.

24 SECRETARY WEBB: Senator Craven.

25 SENATOR CRAVEN: Aye.

26 SECRETARY WEBB: Senator Mello.

27 SENATOR MELLO: Aye.
28

1 which was then the Adult Authority, as a Hearing Representative
2 and worked approximately two years.

3 I then returned to Soledad Correctional Training
4 Facility as the Deputy Superintendent of Central Facility in 1975
5 and worked there until end of 1976. Then I had my first chance
6 to go to San Quentin as a Deputy Warden in 1977. I remained
7 there until approximately May of 1980, when I was assigned to
8 Soledad Correctional Training Facility as the Superintendent, and
9 worked there until the latter part of 1981, when I was reassigned
10 and sent as an acting Warden back to San Quentin.

11 In January of 1982, I was appointed and then confirmed
12 by this Committee and was there until December of last year,
13 1983, at which time I received this appointment as Superintendent
14 of the new prison to be established and constructed at San Diego
15 County.

16 VICE-CHAIRMAN JOHNSON: Are there any questions?

17 SENATOR MELLO: I'd like to ask pretty the same line of
18 questions I asked Mr. Estelle, and that is: How do you perceive
19 and evaluate the Art in Prison program?

20 MR. PULLEY: I think it's an excellent program, sir. I
21 observed it at Soledad when it came in, and it was giving the
22 inmate an opportunity to learn, to participate, and to become
23 involved in a positive outlet through art and other activities
24 that were related to that program.

25 Having seen some of the work of inmates and the
26 capabilities that they have, and the opportunity that they can
27 express themselves through that art medium, I highly support the
28 program.

1 SECRETARY WEBB: Senator Petris. Senator Johnson.

2 VICE-CHAIRMAN JOHNSON: Aye.

3 SECRETARY WEBB: Senator Roberti.

4 VICE-CHAIRMAN JOHNSON: You want to leave the roll open.

5 SENATOR MELLO: Yes, let's leave the roll open.

6 VICE-CHAIRMAN JOHNSON: Just so you'll look better when
7 it goes to the Floor.

8 MR. ESTELLE: Thank you, Mr. Chairman.

9 VICE-CHAIRMAN JOHNSON: But you have the three votes, so
10 you've been confirmed.

11 MR. ESTELLE: Thank you.

12 VICE-CHAIRMAN JOHNSON: Now we have Reginald Pulley,
13 Superintendent of the California State Prison at San Diego.

14 MR. PULLEY: How do you do, sir, gentlemen. I'm
15 Reginald Pulley.

16 I started my career in State service in 1962 as a parole
17 agent, having previously been a deputy probation officer in Los
18 Angeles County. I worked in the Los Angeles area as a deputy
19 parole agent until about 1969, when I established a halfway house
20 in the city of Los Angeles, and I operated that until
21 approximately 1970.

22 I had my opportunity then to enter the institution, and
23 went to Soledad for the first time on a training and development
24 assignment as a Program Administrator. And I worked there until
25 approximately 1972, when I left and went to the California
26 Rehabilitation Center as an Associate Superintendent. I worked
27 there a short period, and then left and went to the Parole Board,
28

1 SENATOR MELLO: Do you have any figures or monitoring of
2 the inmates as they are released to see whether or not this
3 experience has helped them re-enter society?

4 MR. PULLEY: No, sir, I do not have any figures, but I
5 do have experience that inmates have told me that that
6 opportunity gave them more experience that when they got to
7 society, or returned to their community, that opportunity to
8 demonstrate and to know the skill that they learned through that
9 activity was a benefit to them upon release.

10 SENATOR MELLO: What about the MDSO program?

11 MR. PULLEY: I'm not involved in that, sir.

12 SENATOR MELLO: Are you getting referred to your
13 institution any of the persons who formerly would go to the
14 mentally disordered sex offender program that are now coming
15 direct --

16 MR. PULLEY: In anticipating the inmate who would come
17 to the new prison, I'm quite sure I will get some inmates who
18 will have been at CMC or Vacaville who would have had a chance to
19 go through the program or the services, the psychiatric care and
20 treatment, at those facilities.

21 SENATOR MELLO: Do you feel there's a need to provide
22 the type of counseling and behavior modification for this type of
23 inmates?

24 MR. PULLEY: I believe we need more assistance for those
25 types of persons.

26 SENATOR MELLO: Looking through some of the notes here,
27 you have an overcrowded situation in your facility. What is the
28

1 extent of the double celling, and how do you see that problem
2 being remedied?

3 MR. PULLEY: Sir, I am not presently at an institution.
4 I'm presently working assigned as a new prison Manager, designing
5 in the construction phase of the new prison at San Diego.

6 SENATOR MELLO: You're not in the --

7 MR. PULLEY: I was formerly at San Quentin and formerly
8 at Soledad.

9 SENATOR MELLO: From your own past experience, didn't
10 you and I meet at Soledad?

11 MR. PULLEY: Yes, sir.

12 SENATOR MELLO: I remember coming there visiting.

13 SENATOR CRAVEN: How long were you in for, Henry?

14 (Laughter.)

15 SENATOR MELLO: About three hours. Believe me, it took
16 a little while to get in, but getting out was -- it took a little
17 while as well, about 30 minutes.

18 From your own experience, do you feel that double
19 celling has a negative impact on the facility, or do you think
20 that's a high priority? As far as our building program is made
21 do you think the goal should be to eliminate double celling, or
22 do you think double celling can be made compatible if they're
23 designed properly?

24 MR. PULLEY: Double celling cannot be made compatible
25 with any program. We are designing our prisons to be single
26 cell. We are forced to double cell them because of the current
27 situation and the fact that we do have a criminal problem in our
28

1 communities, and people are coming to prison who need to be
2 locked up.

3 We are designing the prison at San Diego for the worst
4 case case of 190 percent overcrowding. We have a design capacity
5 for 2200; 2,000 of those people would be Level III inmates, and
6 we have divided that prison -- 2,000 -- into four 500-man beds.
7 And that's the operational design that will afford care and
8 custody for inmates in single cell, but we realize that double
9 cell is coming, and we're planning. Hopefully I will have an
10 operational level of about 125 to 130 percent.

11 SENATOR MELLO: Thank you.

12 VICE-CHAIRMAN JOHNSON: Any further questions? Any
13 opposition to this appointment?

14 SENATOR CRAVEN: Mr. Chairman, there being none, I would
15 move the confirmation of Mr. Pulley to the Floor do pass.

16 VICE-CHAIRMAN JOHNSON: Without objection, Secretary
17 will call the roll.

18 SECRETARY WEBB: Senator Craven.

19 SENATOR CRAVEN: Aye.

20 SECRETARY WEBB: Senator Mello.

21 SENATOR MELLO: Aye.

22 SECRETARY WEBB: Senator Petris. Senator Johnson.

23 VICE-CHAIRMAN JOHNSON: Aye.

24 SECRETARY WEBB: Senator Roberti.

25 CHAIRMAN ROBERTI: Aye.

26 The vote is four to nothing; Mr. Pulley's confirmation
27 is recommended to the Floor.
28

1 MR. PULLEY: Thank you, sir.

2 CHAIRMAN ROBERTI: Senator Johnson moves to lift the
3 call on Wayne Estelle.

4 Secretary will call the roll.

5 SECRETARY WEBB: Senator Petris. Senator Roberti.

6 CHAIRMAN ROBERTI: Aye.

7 The vote is four to nothing; Mr. Estelle's confirmation
8 is recommended to the Floor.

9 Next is Mr. Daniel B. Vasquez, Warden of the California
10 State Prison at San Quentin.

11 MR. VASQUEZ: Good afternoon, Mr. Chairman, Members of
12 the Committee.

13 CHAIRMAN ROBERTI: We'll ask you the same question we
14 ask the Governor's appointees: Why do you feel you're qualified
15 to assume this position?

16 MR. VASQUEZ: Well, I'm bringing nearly 20 years of good
17 correctional experience that I've learned in the State of
18 California, having started out as a correctional officer and boot
19 strapped my way up to the position I'm at now. I've held
20 positions such as in the counseling services of the Department,
21 parole agent, special agent, Program Administrator, Associate
22 Superintendent, Deputy Superintendent, and Chief Deputy
23 Superintendent was the last assignment at Soledad, which is the
24 largest of our prisons in the State of California. And then on
25 to San Quentin as a Warden Designee.

26 CHAIRMAN ROBERTI: Any questions of Mr. Vasquez?
27
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1 SENATOR MELLO: Just to point out that the experience at
2 Soledad always leads them to upward mobility.

3 MR. VASQUEZ: There's been some good men and women have
4 come from Soledad, sir.

5 SENATOR JOHNSON: Now that we've had the commercial, I
6 move the appointment of Daniel B. Vasquez.

7 CHAIRMAN ROBERTI: Mr. Vasquez' appointment is moved to
8 the Floor do pass.

9 Any opposition? You may be getting off easy, Mr.
10 Vasquez.

11 The Secretary will call the roll.

12 SECRETARY WEBB: Senator Craven.

13 SENATOR CRAVEN: Aye.

14 SECRETARY WEBB: Senator Mello.

15 SENATOR MELLO: Aye.

16 SECRETARY WEBB: Senator Petris. Senator Johnson.

17 SENATOR JOHNSON: Aye.

18 SECRETARY WEBB: Senator Roberti.

19 CHAIRMAN ROBERTI: Aye.

20 The vote is four to nothing, confirmation of Mr. Vasquez
21 is recommended to the Floor.

22 Congratulations.

23 (Thereupon this portion of the Senate
24 Rules Committee hearing was terminated
25 at approximately 2:15 P.M.)

26 --oo0oo--
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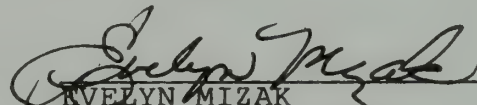
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That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

6th day of June, 1984.


EVELYN MIZAK
Shorthand Reporter

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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

Legislative

STATE CAPITOL

ROOM 3191

SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 13, 1984

1:30 P.M.

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10 STATE CAPITOL
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12 SACRAMENTO, CALIFORNIA
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16 WEDNESDAY, JUNE 13, 1984

17 1:30 P.M.
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25 Reported by:

26 Evelyn Mizak
27 Shorthand Reporter
28

MEMBERS PRESENT

Senator David Roberti, Chairman
Senator Ray Johnson, Vice-Chairman
Senator William Craven
Senator Nicholas Petris
Senator Henry Mello

MEMBERS ABSENT

None

STAFF PRESENT

Cliff Berg, Executive Officer
Pat Webb, Committee Secretary
Rick Rollens, Consultant
Nancy Michel, Consultant
Bruce Samuel, Assistant to Senate Rules Committee

GOVERNOR'S APPOINTEES REQUIRED TO APPEAR

ROBERT E. DORAN, Superintendent,
Sierra Conservation Center

ALSO PRESENT

Daniel J. McCarthy
Paul J. Morris
Felipe D. Rubio
Roberto Tafolla
Richard Anderson
Dave Armendariz
Carlos M. Alcala
Francisco Rodriguez

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P R O C E E D I N G S

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CHAIRMAN ROBERTI: The next item is Governor's Appointees appearing today, Robert E. Doran, Superintendent of the Sierra Conservation Center.

Mr. Doran, we'll ask you the same question we ask all Governor Appointees, and that is why you feel you're qualified to assume this position.

MR. DORAN: Yes, thank you, Mr. Chairman.

I believe I am qualified for this position for several reasons. One is I'm a long-term employee of the Department of Corrections, extensive training and education in correctional work. I've worked with several different institutions at several levels. I've also worked in staff positions at headquarters.

I was also, several years ago, a superintendent, Superintendent of the California Rehabilitation Center in Norco and was confirmed by the Senate at that time.

Since then I've been Deputy Director of Institutions, and I've been in the present position for about eight months as Superintendent of the Sierra Conservation Center. And I believe in these eight months we've made progress in a number of areas. Just to mention two: one is staff training, and the other is affirmative action.

CHAIRMAN ROBERTI: Thank you.

Are there any witnesses in support of your nomination? Please come forward.

1 MR. MCCARTHY: My name is Daniel McCarthy. I am
2 currently the Director of the California Department of
3 Corrections, and I'm speaking in support of Mr. Doran.

4 I have known him for over 20 years at various capacities
5 throughout the Department. I've been both at times subordinate
6 to him and supervisor of him. During his entire career that I
7 have known him, he has performed, as far as I'm concerned, in an
8 outstanding manner. His administrative approaches are sound; his
9 dealings, as he just mentioned a minute ago in the areas of
10 affirmative action, I can through my experience with him, I could
11 not fault any of them.

12 If he was anywhere a racist or a sexist, as far as I'm
13 concerned I would not be nominating him for this particular job.
14 I think that throughout all his career that he has performed.
15 He's had to at times make some difficult decisions.

16 I think, unfortunately, and it may come out later in the
17 hearing if other people testify against him, that there was a
18 change of administration. During this change, there was certain
19 operational procedures, approaches, that were changed from my
20 administration from the past administration. One of them
21 primarily was in the area of personnel and dealing with
22 personnel. At one time there was an approach in this Department
23 that the staff found very objectionable because they felt that
24 they weren't given a true review of their particular cases.

25 There was one such case that I did overrule Mr. Doran's
26 decision, and I can assure that it wasn't along racist lines; it
27 was again more of a change in my particular attitude. In fact, I
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1 had met with the employee organization upon accepting this
2 assignment, and this is one of their primary complaints about how
3 the Department was being operated at this time. I assured them
4 at that time that I would review each and every action taken by
5 this Department as far as it dealt with the adverse nature. If a
6 person was going to be fired for some reason, as it stands now I
7 review all of these cases before they become final.

8 It is also true that if there's any questionable hires
9 or reinstatements that it is sent to my desk for review prior to
10 final action being taken.

11 So consequently there were things that were changed.
12 There were decisions of Mr. Doran at that time that were
13 overruled by me, but it wasn't due to the nature of his decision
14 making. I think it was more due to the nature of the change of
15 approaches from the past administration to the current
16 administration.

17 I'll answer any other questions that any of the
18 Committee might have.

19 CHAIRMAN ROBERTI: Thank you.

20 Are there any questions? Fine.

21 Why don't you just maybe stay in the front row.

22 MR. MCCARTHY: I'll be available.

23 CHAIRMAN ROBERTI: Any other witnesses in support?

24 MR. MORRIS: I'm Paul Morris, Deputy Director of
25 Institutions for the Department of Corrections.

26 I've known Bob, too, for over 20 years. I've worked
27 with him; I've worked for him, and he presently works for me.
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1 I've found him to be of the highest honesty and
2 integrity, both to deal with as a boss for the year and a half he
3 was my boss when I was Warden at Folsom Prison; he dealt very
4 fairly with me and is a very responsive leader. And now that
5 we've had this role reversal, he's an excellent employee. I'm
6 well satisfied with his work out at the Sierra Conservation
7 Center.

8 CHAIRMAN ROBERTI: Thank you.

9 Any other witnesses in support? Please come forward.

10 MR. RUBIO: My name is Felipe Rubio. Presently I'm a
11 Correctional Lieutenant at the California Rehabilitation Center
12 in Norco.

13 I'd like to say that I've known Mr. Doran for 12 and a
14 half years; nine of those years -- or eight of them were as he
15 was Deputy Director -- or Deputy Superintendent, and two of those
16 years he was Superintendent of the institution.

17 I'd like to state that in all that time that I worked at
18 that institution until the present, I'm still working there, that
19 affirmative action was just a word. It was never a reality at
20 that institution as it is presently at some of the other
21 institutions.

22 And under the leadership of Mr. Doran, affirmative
23 action became a reality. All minorities were given an
24 opportunity to compete for positions, job assignments that would
25 better prepare an individual for future advancement. Prior to
26 this under the direction of Roland Wood, who was a Superintendent
27 back in 1971, he also was under the same mandate of implementing
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1 affirmative action; however, he chose not to do it. Under the
2 leadership of Glenn Smith, who followed Roland Wood, again he was
3 under the same mandate of implementing affirmative action, and
4 again he chose not to do it.

5 Under Mr. Doran, he gave everyone an opportunity. He
6 left no one out: the Blacks, women, and Mexicans, along with the
7 Whites, were all given fair opportunity.

8 At the time, I would say that when Mr. Doran left, that
9 I could put up his affirmative action at that institution with
10 any other superintendent at any other institution. There was
11 none that could compare with the California Rehabilitation
12 Center.

13 I'm not saying that we always agreed with Mr. Doran,
14 because that was not true. But at least he heard us out, and he
15 did what he could.

16 Also, not only did he deal with affirmative action, but
17 under his administration for morale of the institution rose from
18 where it was down at the bottom. He made sure that our security
19 of the institution -- he paid a lot of attention to that, put a
20 lot of effort into that, and because of that, escapes at that
21 institution were almost cut to nothing.

22 Training, he made sure that the custody individuals in
23 that institution were given adequate training and also to the
24 ancillary sections.

25 Mr. Doran has always supported the minorities and
26 especially Mexicans. In 1981, at the annual conference of the
27 Chicano Correctional Workers Association, Mr. Doran was the chief
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1 speaker for our organization. And the reason he was chosen was
2 because of his commitment to affirmative action and to giving
3 Mexicans and minorities equal opportunity. And in 1983, it was
4 voted at the Chicano Correctional Workers Association, Southern
5 Chapter, and we supported Mr. Doran by a vote of nine to two.
6 And because of that, Mr. Doran was given a plaque because of the
7 fine, outstanding work that he has done.

8 I'd like to -- in closing, I'd like to say that Mr.
9 Doran, even in the position that he is now at Sierra, that he has
10 already displayed throughout the Department a willingness and a
11 commitment to affirmative action by making it one of his top
12 priorities to include minorities in the camp system, which it
13 wasn't prior to his arrival. He's allowing women, Mexicans and
14 Blacks to be in the camp program, and that has never been done
15 before.

16 I'd just like to say that -- also, for your information,
17 I was never promoted under Mr. Doran. I made Sergeant under
18 another superintendent, and I made Lieutenant under another
19 superintendent, but I'm here. I got up at 3:00 this morning;
20 drove up here from Riverside; took the day off because I am so
21 committed to this man because he's done so much for the Mexican
22 people and for minorities.

23 CHAIRMAN ROBERTI: Thank you very much.

24 Any other witnesses in favor? Please come forward.

25 MR. TAFOLLA: Good afternoon, ladies and gentlemen. My
26 name is Roberto Tafolla.
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1 I'm here as a constituent, and I also drove with the
2 gentleman before me from Riverside, California.

3 And the purpose of my statement here, my read, is trying
4 to attempt to hopefully bring some pertinent information and
5 maybe some of the type of testimony needed in order for you to
6 make a sound decision in the confirmation of Robert E. Doran.

7 I would like to present some documentation if I may for
8 the record, and hopefully these documents can address your
9 concerns or maybe your doubts about Mr. Doran's professional
10 record with the Department of Corrections regarding affirmative
11 action and minorities.

12 Mr. Doran, I worked for him. I was, as you probably
13 call us, prison guards, which I resent but that's something that
14 the public and everybody else have to learn.

15 Mr. Doran's management, leadership and ability as a
16 Deputy Director of Corrections, as a Superintendent of the
17 California Rehabilitation Center, and presently as the
18 Superintendent of the Sierra Conservation Center, without in my
19 mind as an employee of the Department of Corrections for the last
20 ten years personally should be commendable, and this is the type
21 of leadership that our Department, which is in need of a lot of
22 leadership and management abilities, should be seeking for.

23 In terms of his policy, record and attitude towards
24 affirmative action, I do not want to run a rerun of the record.
25 Mr. Doran's record on affirmative action at the Deputy Director
26 spot, at the Superintendent of the California Rehabilitation
27 Center, and at the present facility at Sierra speaks for itself.
28

1 And I'm not like the other gentleman; yeah, I was
2 promoted while Mr. Doran was the Superintendent of CRC, a
3 promotion that I have sought for nine years.

4 So, I urge you to review and consider Mr. Doran's prior
5 professional record, and hopefully you can make a sound decision
6 on his confirmation.

7 Thank you very much.

8 CHAIRMAN ROBERTI: Thank you, Mr. Tafolla.

9 Anyone else in support?

10 MR. ANDERSON: Good afternoon. My name is Richard
11 Anderson. I'm currently the Associate Superintendent at the
12 Sierra Conservation Center, where Mr. Doran is located.

13 I've had two occasions to work under him: one about 14
14 years ago, when he was Chief of Classification Services here in
15 Sacramento; and of course over the last several months up at
16 Sierra Conservation Center.

17 In my personal judgment and in my experience working
18 with Mr. Doran, I think he's a true professional. He treats his
19 staff well. He is creative; he's imaginative; and in my judgment
20 he's done some things at his present assignment at Sierra
21 Conservation Center that has made it a better place to work.
22 He's done some things, as he already pointed out, in training,
23 and as one gentleman pointed out in the area of affirmative
24 action that are all pluses, and in my personal opinion he is
25 certainly deserving of a confirmation today.

26 CHAIRMAN ROBERTI: Thank you very much.

27 Any other witnesses in support?
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1 We'll go to the opposition. Are there any witnesses
2 opposed? Yes, come forward.

3 MR. ALCALA: I'm Mr. Carlos Alcala. I'm the Counsel for
4 the Chicano Correctional Workers Association of California, an
5 organization with approximately ten chapters and about 500
6 members.

7 I'd like to thank the Members of the Committee for
8 taking the time to hear our opposition to Mr. Doran's
9 confirmation in this appointment.

10 Basically, I think I'm going to echo the words that were
11 set out here by the Director of the Department: We're here
12 because this man has had an objectionable approach, I think were
13 the words that were used by Mr. McCarthy, in handling his roles
14 in the Department. And we're not here to talk about affirmative
15 action; we're here to talk about discrimination.

16 What none of the speakers have told you and failed to
17 tell you was that on April 29th, 1983, the Department of
18 Corrections found this gentleman to be guilty of discrimination,
19 they reversed the decision, and directed other officials in the
20 Department to reinstate a correctional officer named Francisco
21 Rodriguez, who had been with the Department, like Mr. Doran, for
22 many years, been with the Department for 11 years. During that
23 time he received numerous commendations, approximately nine.
24 He'd been injured: in August of '76 a broken wrist; in May of
25 '77, groin injuries; in '77 another groin injury; he's been
26 injured in the line of duty. And when it came time for him to
27 have some consideration from Mr. Doran, Mr. Doran was found
28 wanting.

1 We appealed the conduct of Mr. Doran, charging
2 discrimination. And after investigation by the Department, it
3 was found that Mr. Doran's reasons for rejecting Mr. Rodriguez
4 were pretextual; that is to say that they were not -- although he
5 was advancing a reason, that reason was a mere pretext to cover
6 racial discrimination.

7 On April 29th, 1983, the Department reversed Mr. Doran's
8 decision not to reinstate Mr. Rodriguez, and we find that that's
9 consistent with his conduct in the past which has caused a great
10 deal of concern from the Mexican officers, and that's why we're
11 here.

12 I realize that he did have a couple of officers speak on
13 his behalf. We, however, are representing a very substantial
14 organization with a very large membership inside the Department
15 of Corrections.

16 At this time I'd like to introduce Mr. Rodriguez, who is
17 the officer involved and will tell you directly what happened to
18 him, and he'll be available to answer any questions you might
19 have.

20 MR. RODRIGUEZ: My name is Francisco Rodriguez. I'm
21 presently employed at San Quentin State Prison.

22 Approximately on July of 1982, I had a break in service
23 with the Department of Corrections to go into private business.
24 Two weeks later, the person I had made a deal with, he changed
25 his mind and things went wrong, so I decided to go back to the
26 Department, at which time that's when this problem started.

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1 I was accepted for reinstatement back in San Quentin
2 State Prison starting all the way from Captain, the Captain of
3 the prison, and then the Warden. Everybody accepted me, and when
4 the case went to Sacramento, it was turned down by Backgrounds
5 Investigation Committee. And from there it went all the way to
6 Mr. Doran.

7 And my case lasted a year -- approximately a year and
8 two months for me to come back --

9 CHAIRMAN ROBERTI: Was there a transcript of your case,
10 of the hearing?

11 MR. ALCALA: There is an Investigative File, dated
12 May 2nd, 1983, from the Assistant Director for the Department,
13 and I have submitted that to the Committee.

14 CHAIRMAN ROBERTI: Please continue.

15 MR. RODRIGUEZ: I made -- I made many attempts to try to
16 see Mr. Doran. I wrote him numerous numbers of letters pleading
17 for my job back. I went to see numerous numbers of people that
18 worked under him, directly under him at that time when he was
19 Director for Institutions, at which time he never once gave me a
20 minute to listen to my case and for consideration.

21 I left the Department with good standards. I always was
22 an outstanding employee. I'm a strong individual; I speak well
23 in the Department. I know a lot of people in the Department,
24 high ranking officials, which were backing me up all the way.
25 And the decision was still turned down by Mr. Doran here, who
26 really never gave me no answer with just cause as to why he was
27 denying my reinstatement.
28

1 Again, the Warden and other high ranking officials were
2 with me, but the decision was up to Mr. Doran. And he never,
3 never in writing gave me a reason as to why he was denying my
4 reinstatement until the final end and Mr. Alcala took my case
5 over.

6 MR. ALCALA: I might point out that --

7 CHAIRMAN ROBERTI: What was the stated reason?

8 MR. ALCALA: The stated reason was a Background
9 Investigative Unit report.

10 Now, the normal procedure inside the Department of
11 Corrections is that the Warden as the appointing authority
12 considers all reports and decides whether or not to reinstate an
13 officer. In this case, the Warden and everyone at the prison
14 considered the Background Investigative Unit report, followed the
15 normal procedure, and requested that Mr. Rodriguez be reinstated.

16 The Department investigators found that Mr. Doran
17 circumvented the normal procedures of the California Department
18 of Corrections, refused to follow the normal policy of allowing
19 the Warden to make a reinstatement decision, set out on an
20 independent and novel course of overruling the Warden in the case
21 of the reinstatement of this Mexican officer. It was a move that
22 the Department found to be completely out of line, and it was
23 recommended that the decision be reversed because of Mr. Doran's
24 refusal to follow Departmental policies and procedures in
25 reinstatement.

26 CHAIRMAN ROBERTI: One question. He was reversed on
27 refusal to follow Departmental procedures. Was there anything in
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1 the reversal that indicated discrimination based on race or
2 ethnic background?

3 MR. ALCALA: It was our contention that Mr. Doran's
4 grounds for rejecting this gentleman were wholly pretextual, and
5 that the true reason was discrimination. It was our position
6 that it was a pretext. It was their position that it was not a
7 pretext.

8 At page two of the document, dated April 26th, 1983, the
9 Investigative Report, the following clause is read:

10 "It is reasonable to conclude that
11 the final decision is pretextual."

12 That was the Department's own evaluation of Mr. Doran's reasons
13 for rejecting Mr. Rodriguez.

14 It was our contention, as I said, that his grounds were
15 a mere pretext for racial discrimination. And as is indicated on
16 the Investigative Report -- which incidentally is approved and
17 signed by Daniel McCarthy on April 29th, 1983, and you'll find
18 that on the second page as well; you'll find "APPR: D.M.
19 McCarthy" and "4-29-83" -- the Department itself found that his
20 reasons for rejecting Mr. Rodriguez were a pretext.

21 CHAIRMAN ROBERTI: I'll have Mr. Doran and Mr. McCarthy
22 please note the comments that are being made for a response, that
23 Mr. Alcala is making, and if Mr. McCarthy could respond as well.

24 MR. ALCALA: I might point out also, Senator --

25 CHAIRMAN ROBERTI: Senator Craven.

26 SENATOR CRAVEN: I think we've kind of lost, from the
27 standpoint of my question, the flow of it.
28

1 I just want to ask Counsel why he refers to the officer
2 as the "Mexican officer"?

3 MR. ALCALA: Because he's of Mexican decent and --

4 SENATOR CRAVEN: And you refer to me as the Irish member
5 of the Rules Committee?

6 MR. ALCALA: If it was that you came to me and said that
7 you were discriminated because of being Irish, and it was
8 relevant that it was a charge that you were being rejected
9 because of Irish, I'd come to your defense, just as this officer
10 made a charge that he was rejected because of his Mexican race.
11 I came to the defense of this Mexican officer.

12 SENATOR CRAVEN: He is basically hired as a correctional
13 officer, is he not?

14 MR. ALCALA: Yes, but --

15 SENATOR CRAVEN: And isn't his ethnicity somewhat
16 irrelevant to the fact that he's a qualified officer?

17 MR. ALCALA: It's totally irrelevant. That was our
18 charge.

19 SENATOR CRAVEN: Then I think it's irrelevant to bring
20 it up. If you want to stress the fact that you feel or allege
21 that there was an irregularity, or some kind of a discriminatory
22 practice, that's one thing. I have no objection to that
23 whatsoever. But to refer to him in the manner which you have I
24 think is singling him out, or anyone else out, as somewhat
25 unnecessarily.

26 MR. ALCALA: With all respect, Senator Craven, no
27 officer should be discharged because he's Mexican. This officer
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1 felt he was discharged because he was a Mexican officer, and
2 that's why he wasn't reinstated, and that's why we had to go to
3 the Department and take our claim, and we had to have it
4 investigated. Because it shouldn't happen that an officer should
5 lose his job because of his Mexican race.

6 It's not relevant, just as you've pointed out. And I
7 have to wholeheartedly agree with you, but we had to raise it,
8 and we have to raise it here because you're going to make the
9 decision on whether to put this man in another position where he
10 can do the same thing to other people.

11 And it's very important that you realize what the people
12 of the State feel. I'm just one person, you know, one person and
13 maybe Mr. Rodriguez, and the people in the organization that sent
14 me here. They want you to know what's happened with him and the
15 importance that we feel with discrimination. I'm sure you share
16 our concerns.

17 SENATOR CRAVEN: I share every concern that you have,
18 and I want to hear all of the testimony.

19 CHAIRMAN ROBERTI: Senator Johnson.

20 SENATOR JOHNSON: Did I hear in your opening remarks
21 that the officer left the State employment to go in business for
22 himself with somebody, and he was gone for awhile, and it didn't
23 work out, and he came back and asked to be reinstated?

24 MR. ALCALA: Yes, he did.

25 SENATOR JOHNSON: Two weeks later?

26 MR. ALCALA: Two weeks out of eleven years.
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1 SENATOR JOHNSON: I know, but five minutes you miss an
2 airplane, they don't call it back.

3 MR. ALCALA: Yes, sir.

4 SENATOR JOHNSON: I was an employer for many years, and
5 there's a kind of a double standard. I used to get amused that
6 if I fired somebody once, then some people say: Well, I didn't
7 like the people; I fired them. But maybe I had good reasons.

8 But if the fellow left me and made a success, I was
9 supposed to be happy. And maybe I spent ten years training this
10 fellow, and suddenly he left me holding the bag.

11 So, it's a two-sided thing. Now maybe I don't know.
12 I'd hate to think that this man would consider race as a
13 situation. But I have to believe that --

14 Did Mr. Doran know this gentleman personally, or did he
15 ever see him before, have any dealings with him?

16 MR. ALCALA: I'm not sure other than --

17 SENATOR JOHNSON: Did you ever have any dealings with
18 Mr. Doran before?

19 MR. RODRIGUEZ: No, I never had.

20 SENATOR JOHNSON: He never knew you; you didn't know
21 him?

22 MR. RODRIGUEZ: I'd seen him in many other places.

23 SENATOR JOHNSON: But I mean, you never worked directly
24 under him?

25 MR. RODRIGUEZ: Never have.

26 SENATOR JOHNSON: All right. Now we have a couple of
27 other officers here who've worked directly under him, who blew
28 smoke on him, said he was a great guy, so we get both sides.

1 But the point of it is, you're assuming that Mr. Doran
2 took these steps because the officer feels it was a racial
3 situation. But there are many times you lawyers assume a lot of
4 things that are not necessarily the way they are. And we do that
5 in the Legislature from time to time, too. We're all guilty of
6 it.

7 A lot of people assume I became an Independent because I
8 didn't like somebody. But I became an Independent because I
9 didn't have much choice. So there's a whole difference in this
10 thing.

11 (Laughter.)

12 SENATOR JOHNSON: So, the assumptions come from
13 different sources.

14 If a man is going to be a racist, it doesn't look to me
15 like he would be friendly. He would kind of stay aloof from
16 those people.

17 I'm just wondering whether Mr. Doran felt there were
18 other reasons that this man left. If we're going to run an
19 institution -- and I'm not saying you shouldn't consider it;
20 please don't misunderstand me -- but I'm just saying, maybe he
21 felt: Well, the fellow wants to go on his own, well then we've
22 got other people that are entitled to move in here now and move
23 up. And maybe that was his reason; I don't know.

24 But I hate to think that just because you can point your
25 finger, like Craven said over there -- Senator Craven, he's an
26 Irishman -- well, we're Americans, all of us. And here we have a
27 lot of correctional officers working, and we have a situation
28 developing here.

1 I don't know. Maybe Mr. Doran can elaborate on it at
2 the right time, but I hate your making the charge that it was
3 done purely on racism. That's like pointing at the star and
4 saying how far away is it. How do you prove it one way or the
5 other?

6 You don't know what's inside of a man's heart. Did he
7 do it because it was the officer here happened to be of Hispanic
8 descent; is that why he did it? I don't know. But it's kind of
9 hard for me to believe that when other men of the same race are
10 here telling us what a great guy he is.

11 So, it's easy now to point your finger at somebody and
12 say: Well, because of this, he does those things. I don't know.
13 That's our job, is to find out. If he did it for racial things,
14 I certainly wouldn't vote to confirm him. But I'm just not
15 convinced at this point.

16 MR. ALCALA: I was just going to point out, Senator
17 Johnson, that one of the assumptions in what you were stating was
18 that this employer could choose for any number of reasons not to
19 reinstate Mr. Rodriguez.

20 What you have to understand is that the employer was the
21 institution. They're primarily charged under Departmental policy
22 with reinstating people. The employer said that this man was
23 qualified. They went through all of the procedures that are
24 normal for correctional officers, and the employer said: Give
25 this man his job; he's been there eleven years; he's had
26 commendations; he's been injured on the job; he was a model
27 officer.
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1 And what happened is that the employer was overruled by
2 a person from Sacramento who said: Listen, Mr. Employer, I've
3 got another agenda, and I'm not going to let you reinstate that
4 person, and I don't care if the procedure does state that even if
5 you consider all these factors and you want to put him back in, I
6 don't care about all that; my agenda's different, and I'm not
7 going to reinstate him.

8 And if it's so important, as you point out, that the
9 employer make the decision, please consider that in this case it
10 was the employer that wished to reinstate him. And it was this
11 gentleman, who was not the employer, who stopped the normal
12 employer-employee relationship from occurring in a
13 nondiscriminatory fashion.

14 And I'm not just charging discrimination. I'm repeating
15 the report of the Department of April 29th, 1983, which found
16 discrimination. They took much more time than I could have taken
17 or than this Committee is taking. And after an in-depth
18 investigation, it was their conclusion that this man was guilty
19 of discrimination, not just mine.

20 CHAIRMAN ROBERTI: How many people in the Department
21 participated in the investigation?

22 MR. ALCALA: I'm not sure. There is a unit there that
23 has a number of people. There's a report of eight or nine pages,
24 with several chronologies listed in there, and Finding and
25 Conclusion signed by the Assistant Director and an Approval
26 signed by the Director.

27 SENATOR CRAVEN: Mr. Chairman.
28

1 CHAIRMAN ROBERTI: Yes, Senator Craven.

2 SENATOR CRAVEN: Counsel, I understand what you're
3 saying about the employer's consent his reemployment.

4 What I wanted to ask you is this: Is it not within
5 Mr. Doran's purview to exert a certain prerogative as to making
6 the decision that he ultimately made?

7 MR. ALCALA: No, it was not. And the Department found,
8 in fact at page two of the report, quote:

9 "Since established Departmental
10 policy was not followed in this
11 regard, and the long-standing
12 practice of the hiring decision
13 resting with the Warden has not
14 been adhered to, it is reasonable
15 to conclude that the final decision
16 is pretextual."

17 He went outside the bounds of his authority in order to
18 do this. If he had acted within a decision that he could have
19 decided as a duty that was discretionary, Senator Craven, I'd say
20 your point in fact would be extremely important, that it was a
21 discretionary duty.

22 But he had no discretionary duty. He went outside the
23 bounds of his authority to do this to Mr. Rodriguez, and he
24 shouldn't have done it. He caused this man a great deal of
25 suffering. His family was without food; they couldn't pay their
26 rent; their utilities weren't being paid. He suffered a great
27 deal. You don't know how much the gentleman suffered because
28

1 this other gentleman chose to circumvent the rules, not to follow
2 the procedure and just take it upon himself to do this.

3 SENATOR CRAVEN: So then, the decision that was made, a
4 decision to which you have objected, was in fact reversed by
5 another authority. Am I correct in saying that?

6 MR. ALCALA: Yes, I think it was very well done,
7 graciously done by the Director McCarthy, but it shouldn't have
8 been necessary for Mr. McCarthy to have to step in and tell
9 Mr. Doran: You're out of line.

10 SENATOR CRAVEN: I see; very good. Thank you.

11 MR. ALCALA: I've also listed some other concerns in the
12 letter of May 18th, 1984, concerning some administrative problems
13 that were brought to our attention, but I don't want to go into
14 those. I think the written description there concerning problems
15 that have been caused by -- I think the words that were used, the
16 objectionable approach of Mr. Doran -- are listed in the three-
17 page letter of May 18th, 1984, setting forth numerous instances
18 of the problems that this objectionable approach ultimately
19 brings on people when people act as he does.

20 But what happened to this man should have never
21 happened. He should have never had to go through what he had to
22 go through.

23 And we're asking you to reject this man, Mr. Doran, so
24 that no other officer has to ever be submitted to this sort of
25 arbitrary and capricious behavior that Mr. Doran submitted Mr.
26 Rodriguez to.
27
28

1 SENATOR JOHNSON: I have another question. Is it then
2 the State policy or Department's policy that if someone leaves to
3 go and, for whatever reason, is gone for two weeks or a month,
4 that he has a God given right to be put back to work when he
5 applies? Is that Department policy?

6 MR. ALCALA: No.

7 SENATOR JOHNSON: So the Director decides: Well, he
8 left, and he took it on his own, then I don't see any reason why
9 I have to put him back.

10 MR. ALCALA: The Director didn't decide that, though.
11 The Warden decided that he --

12 SENATOR JOHNSON: I wanted to make sure that in running
13 this ship of state that everybody doesn't have a free choice.
14 You know, if you're working for somebody you become very
15 important. Suddenly you say: Well, I'm going to take a flyer
16 for two or three weeks; if it works, I'll throw you a kiss, but
17 if it doesn't work I'll be back.

18 That isn't in the book? Can you do that?

19 MR. RODRIGUEZ: Yes, you do have three years, Senator,
20 to come back if you so desire. Either you take a leave of
21 absence, or you resign, or you have a break in service. You have
22 the right to come back.

23 SENATOR JOHNSON: And you took a leave of absence?

24 MR. RODRIGUEZ: Correct -- no, sir. I resigned.

25 SENATOR JOHNSON: So you didn't take a leave of absence;
26 you resigned.

27 MR. RODRIGUEZ: Correct.
28

1 SENATOR JOHNSON: When you resign you have three years
2 to come back again?

3 MR. RODRIGUEZ: Correct.

4 MR. ALCALA: It's called permissive reinstatement.

5 SENATOR JOHNSON: Is that optional? Do you have an
6 automatic reinstatement?

7 MR. ALCALA: It's optional. If the appointing authority
8 wishes you back, you're generally put back. But in this case the
9 appointing authority said: Let's put him back.

10 The only question I'd like you gentlemen to ask
11 Mr. Doran is, and I think it must turn on that, why did Mr. Doran
12 circumvent the procedures of the Department of Corrections for
13 this officer not to be reinstated? I think it's got to really
14 turn there with regard to this gentleman.

15 I mean, if the Department has genuinely found -- and
16 I've given you the documentation -- they found that he
17 circumvented their procedures to keep this gentleman from being
18 reinstated, and that it was a violation of procedures and a long-
19 established practice, he must have had a reason to ignore the
20 Warden. His own assistant recommended that Mr. Rodriguez be
21 reinstated. He must have had a reason.

22 SENATOR JOHNSON: Does the law require that you divulge
23 the reasons?

24 MR. ALCALA: No, it does not.

25 SENATOR JOHNSON: Let me tell you a little bit of
26 background about something that happened.

27

28

1 I had an employee that was stealing from me one time,
2 and he was caught. He was bonded, but he was a father and had
3 two children.

4 I decided against going after the bonding company. I
5 decided against some other interesting things. His wife and
6 children don't know that to this day.

7 He left, and a lot of people thought he was fired, but
8 he couldn't face me. No one to this day knows why he left. But
9 if I were forced to tell it, I would have to embarrass the family
10 and everything else.

11 I'm just wondering whether the law -- and I don't know
12 whether it applies in this case or not -- but sometimes in
13 leadership positions, you're forced to keep certain things to
14 yourself to protect other people. I don't know anything about
15 this, but there may be something to that. But we have to look at
16 all sides, and that was one thing that I know something about,
17 and that's employees. And there are times when you do things to
18 protect an employee, or the family, or something, for whatever
19 reason. And that's why I wanted to be sure that who ever happens
20 to be in the top spot, sometimes as Harry Truman says: If you
21 can't take the heat, you don't belong in the kitchen.

22 Sometimes even though you know things, and I've been
23 accused wrongfully at times, but in order to protect somebody you
24 do it. Because when you are the top dog, you never know.

25 SENATOR PETRIS: Mr. Chairman.

26 CHAIRMAN ROBERTI: Senator Petris.
27
28

1 SENATOR PETRIS: I don't know why we're speculating so
2 long. Why don't we just ask the man?

3 CHAIRMAN ROBERTI: Good point.

4 Mr. Doran.

5 MR. DORAN: First of all, I did not make the decision.
6 The Deputy Director of Administration had the Background
7 Investigation Unit, and they strongly recommended that Mr.
8 Rodriguez not be reinstated.

9 I might add that hundreds of those decisions are made --

10 CHAIRMAN ROBERTI: Who was that again that made the
11 recommendation?

12 MR. DORAN: The Background Investigation Unit, it's
13 under the Deputy Director of Administration. So, it's ultimately
14 the Deputy Director of Administration's decision in this
15 particular instance.

16 But I also added, many hundreds of people are turned
17 down every year. It's not a unique situation.

18 The Deputy Director of Administration and the Section
19 Chief came to me. That's the only reason I was involved in this.
20 Normally -- in fact, I don't think I was involved in any other
21 case. They came to me and strongly recommended that Mr.
22 Rodriguez not be reinstated, not because I had the power, but
23 because the Warden actually reported to me. And I think they
24 knew that the Warden would be appealing to me. Not that I could
25 change the decision; I could not. But what I could do is, I
26 could use my influence to perhaps change the Deputy Director of
27 Administration's mind, or I could take it forward to the Director
28 if I thought that he had made a mistake.

1 I looked at all the facts in the case. My own position,
2 even to this day is, I will not hire someone who has been turned
3 down by the Background Investigation Unit.

4 CHAIRMAN ROBERTI: Have you ever?

5 MR. DORAN: No, I have not.

6 CHAIRMAN ROBERTI: How many times have you had an
7 applicant rejected by the Background Investigation Unit?

8 MR. DORAN: Many times.

9 CHAIRMAN ROBERTI: Can you give me a number?

10 MR. DORAN: Well, in the course of a year there are
11 hundreds, they tell me.

12 CHAIRMAN ROBERTI: How many do you deal with?

13 MR. DORAN: None. They are under -- the Background
14 Investigation Unit reports to another area.

15 CHAIRMAN ROBERTI: But you told us that you never turned
16 down, you never rejected the report of the Background
17 Investigation Unit?

18 MR. DORAN: When it is brought to my attention.

19 CHAIRMAN ROBERTI: It was brought to your attention?

20 MR. DORAN: That's correct.

21 CHAIRMAN ROBERTI: How often are these brought to your
22 attention?

23 MR. DORAN: As the Deputy Director of Institutions,
24 which is the period they're referring to, one time.

25 CHAIRMAN ROBERTI: That was Mr. Rodriguez?

26 MR. DORAN: That was the one.
27
28

1 CHAIRMAN ROBERTI: How long have you been in Corrections
2 work?

3 MR. DORAN: Twenty-four plus years.

4 CHAIRMAN ROBERTI: In 24 years, you've only had one time
5 that it has been brought to your attention?

6 MR. DORAN: No, as a Deputy Director of Institutions one
7 time was it brought to my attention.

8 CHAIRMAN ROBERTI: How long were you in that position?

9 MR. DORAN: About 16 months. May I explain?

10 CHAIRMAN ROBERTI: What I'm trying to get at is, I'm
11 trying to follow on your line of testimony that there are many of
12 these Background Investigation Unit reports, and that you never
13 act contrary to the Background Investigation Unit, which would
14 lead us to believe there's no discrimination involved.

15 I'm not saying that there was or wasn't, but if you've
16 only heard one, that's not really -- do you see what I mean? How
17 many of these come up before you?

18 MR. DORAN: In this case I did not hear it. The reason
19 I got involved was because the Warden actually reported to me,
20 and he was trying to enlist my help. When I reviewed all the
21 situation that was involved, the reports the Deputy Director of
22 Administration gave me and the Section Chief strongly urging that
23 I not support that, I then made my decision not in regard to
24 hiring. I did not have that authority. I rejected the Warden's
25 appeal to me to take it forward or take it anywhere. I decided I
26 would not do that.

1 The Warden, I might add, if he had felt strongly enough,
2 could have taken it right over my head to the Director, which was
3 so indicated. He did not do that.

4 SENATOR PETRIS: Question.

5 CHAIRMAN ROBERTI: Senator Petris.

6 SENATOR PETRIS: This is a procedural question. You
7 have a man that served, what, eleven years did you say, Mr.
8 Alcala?

9 MR. ALCALA: Yes.

10 SENATOR PETRIS: Nine citations, commendations. He's
11 gone for two weeks.

12 Why is a background report necessary? What are you
13 checking? The two-week break? Has something changed during that
14 time? Why is it necessary to do such a comprehensive background
15 investigation with such a very tiny break in service? Is there a
16 fear that this is a totally different person coming back?

17 Procedurally now, I want to try to understand why the
18 rules would require that, and why they couldn't just say: Hey,
19 here's a fellow who left for a couple of weeks; he's back; what
20 do the people in his shop think about him. If they say: Well,
21 he's been terrific; we ought to put him back on, I don't know why
22 a whole investigation ought to be commenced unless something came
23 to your attention during those two weeks or at any time, let's
24 say, immediately prior to his leaving.

25 MR. DORAN: I cannot answer that question. I've never
26 done one. I've not been involved in it myself, so I --

27
28

1 SENATOR PETRIS: Do the rules require it? Was it
2 necessary to have a background investigation?

3 MR. DORAN: Yes.

4 SENATOR PETRIS: For a reinstatement after two weeks?

5 MR. DORAN: For any new hire.

6 CHAIRMAN ROBERTI: Mr. McCarthy.

7 MR. MCCARTHY: Senator Petris, yeah, that is
8 Departmental policy. You know, a lot can happen in 24 hours.

9 SENATOR PETRIS: After a 24-hour break, how long would
10 it take to investigate and make a report?

11 MR. MCCARTHY: The extent and the length of it may vary,
12 but in this particular instance, and I reviewed the file on it,
13 there were three things mentioned as why they were recommending
14 against the rehire.

15 SENATOR PETRIS: Were they matters that occurred during
16 the two-week period or prior?

17 MR. MCCARTHY: The one that I found wasn't warranted.
18 It was one that happened while he was in our employ that was
19 known by the administration at San Quentin, and at that time they
20 didn't see fit to take any kind of corrective action. And I felt
21 that that shouldn't have been used as one of the reasons.

22 MR. ALCALA: Senator Petris, I think it's also important
23 that you get truthful answers to your questions. This gentleman
24 has told you that he didn't make the decision to reinstate Mr.
25 Rodriguez.

26 I've got to tell you that page two of the April 29th
27 report from the Department of Corrections says, quote:
28

1 "In this respect the individual
2 making the decision has been
3 clearly established as Deputy
4 Director Bob Doran."

5 Unquote. I think it's very important that when a Department
6 comes before you that they be as truthful as possible. And the
7 Department's own report contradict the answers given to you by
8 this witness, and you ought to examine that when you look at his
9 other answers.

10 SENATOR PETRIS: Is that one of the things you've sent
11 us?

12 MR. ALCALA: Yes, that's page two of the report that was
13 sent to you, and it just totally contradicts the witness on that
14 decision.

15 MR. MCCARTHY: I would like to respond to that.

16 I was the one who reviewed not only that report but the
17 whole file and the whole context of Mr. Rodriguez' service with
18 the State Department of Corrections.

19 When I overturned the decision, it wasn't on the cover
20 report that is being quoted from, although I may have been
21 influenced in some way, shape or form by it.

22 I did not feel in any way, shape or form was this done
23 strictly because of a racist decision. I did look at the entire
24 background of Mr. Rodriguez. I did look at the commendations
25 that he had on file. I did look at the background report and
26 things of this nature.

1 When I overruled the decision, it was mainly on account
2 of what is being brought up here right now, is that Mr. Rodriguez
3 was a good employee in the past, and I felt he was worth
4 salvaging. And that's why I overturned it.

5 I didn't -- when I signed the approved to reinstate the
6 man, I did not endorse the report that was submitted to me in its
7 entirety.

8 CHAIRMAN ROBERTI: The statement that you endorsed which
9 states that Mr. Doran's reasons -- I'm paraphrasing now -- for
10 rejecting Mr. Rodriguez are pretextual --

11 MR. McCARTHY: I did not accept that, no. The reason,
12 again as I indicated, that I overruled the report was primarily
13 due to Mr. Rodriguez' excellent background with the Department,
14 and I felt that he should have another chance of serving this
15 Department. And that's the primary reason that I overturned that
16 particular decision.

17 SENATOR PETRIS: May I?

18 CHAIRMAN ROBERTI: Yes, Senator Petris.

19 SENATOR PETRIS: The investigating group, is that a
20 committee that's put together?

21 MR. McCARTHY: No, we have a regular -- it's by statute,
22 Senator Petris, that all peace officers have to be investigated,
23 and that's in the Penal Code.

24 SENATOR PETRIS: Now who does this?

25 MR. McCARTHY: There is a unit made up of about 40
26 investigators that do this.

1 SENATOR PETRIS: Are they employees of the Department or
2 do they come from outside somewhere?

3 MR. McCARTHY: No, they are employees of the Department,
4 Senator.

5 SENATOR PETRIS: How are they selected? Are they civil
6 service people?

7 MR. McCARTHY: Civil service people, yes, sir.

8 SENATOR PETRIS: Is there experience within the
9 institution required before you can get that kind of job?

10 MR. McCARTHY: That's correct.

11 SENATOR PETRIS: How much?

12 MR. McCARTHY: They generally come from the officers.
13 They're usually sergeants and lieutenants who make the
14 investigations.

15 SENATOR PETRIS: Is there a waiting list for that? Is
16 that considered a very desirable job?

17 MR. McCARTHY: A very desirable job, yes, sir.

18 SENATOR PETRIS: Do you recall how many years of
19 experience is necessary?

20 MR. McCARTHY: Not off the top of my head, I can't
21 recall. I think one or two years.

22 SENATOR PETRIS: How many are assigned to one case out
23 of the forty? Would it be one?

24 MR. McCARTHY: Just one, unless it has ramifications.
25 We have units throughout the State. Southern California is a
26 separate part of the State from from here in Sacramento. And if
27 there's something that goes in the investigation that encompasses
28

1 Los Angeles, this investigator wouldn't rush down to Los Angeles.
2 He'd contact that office and let them check out that particular
3 aspect of the investigation.

4 SENATOR PETRIS: Thank you.

5 CHAIRMAN ROBERTI: I would suggest, along the lines
6 Senator Mello has suggested to me, that on this point I frankly
7 think we need more information. I do not want to delve into this
8 lightly. I certainly do not want in any way to infer somebody
9 has engaged in discrimination if that isn't the case. On the
10 other hand, I don't want to treat the accusation lightly. Hence,
11 I think we have to talk to other people; I would suspect those
12 who were engaged in the background report and also maybe Mr.
13 Armendariz.

14 Mr. Armendariz, why don't you come forward.

15 MR. ARMENDARIZ: Mr. Chairman, Members of the Senate
16 Rules, my name is Dave Armendariz, and I'm Assistant Director for
17 Affirmative Action for the Department of Corrections.

18 I'm here to explain to contents of the report and
19 perhaps shed some light on some of the questions that have been
20 raised by the various Members of the Rules Committee.

21 First of all, I'd like to explain that during that time
22 and place with the Department of Corrections, administrative
23 procedures were rather hectic, and very difficult to understand,
24 very difficult to actually implement. We went through at that
25 particular point I think about three or four different Directors
26 and --

27 SENATOR PETRIS: Which year are you talking about?
28

1 MR. ARMENDARIZ: It was during that time the
2 investigation was conducted, '82 I believe.

3 CHAIRMAN ROBERTI: You were in charge of the
4 investigating unit on why Mr. Doran rejected Mr. Rodriguez?

5 MR. ARMENDARIZ: Yes. In fact I made the statement, and
6 I wrote the statement in the report, that it was clearly Mr.
7 Doran who made the decision.

8 That's not the case. It was misstated.

9 At that time, again, certain factors regarding the
10 unstable, if you will, of the Department at that point -- we
11 didn't -- I particularly didn't know, and I assumed that it was
12 Mr. Doran who made the decision.

13 It has been clear now and established since then that it
14 was not he who made the decision.

15 CHAIRMAN ROBERTI: You're saying that point is in error?

16 MR. ARMENDARIZ: That's right.

17 CHAIRMAN ROBERTI: Who did make the decision? Do you
18 have any ideas?

19 MR. ARMENDARIZ: The decision was made by the Deputy
20 Director of Administration.

21 CHAIRMAN ROBERTI: Who is that?

22 MR. ARMENDARIZ: That was Mr. Richard Bayquen.

23 The actual events that took place was basically that Mr.
24 Pulley, then Warden of San Quentin Prison, requested authority to
25 go ahead and appoint Mr. Rodriguez. That particular request came
26 in to the Chief of Training Services, which was the direct
27 supervisor and is the direct supervisor of the Background
28 Investigation Unit.

1 Upon receipt of the Background Investigation report and
2 its contents, the Chief of Training Services then consulted with
3 the Deputy Director for Administrative Services. Mr. Bayquen,
4 then and current Deputy Director of Administrative Services,
5 consulted with Mr. Doran. In fact, it was a strong
6 recommendation, I believe, if my memory serves me right, it was a
7 strong recommendation in memo form that Mr. Rodriguez not be
8 reinstated as a result of the contents of the Background
9 Investigation report.

10 Mr. Doran simply concurred with that recommendation.
11 Mr. Pulley then appealed to Mr. Doran, to now set the record
12 straight, has appealed to Mr. Doran not so much to overrule the
13 decision, but in an apparent effort to attempt to get Mr. Doran
14 to insert some sort of influence in regards to the decision
15 making process. Mr. Doran chose not to.

16 CHAIRMAN ROBERTI: Let me interject at this point, it's
17 three o'clock. I have a meeting with the Governor.

18 On this point I would suggest to the Members of the
19 Committee and myself that if both Mr. McCarthy, who's endorsed
20 the report, and Mr. Armendariz, who drafted the report, indicate
21 that they do not believe that racial discrimination was involved,
22 it would be very difficult for me to conclude in that case,
23 absent considerably stronger proof, that that was the case. I
24 certainly do not choose to reject somebody when the people who
25 are actually signatories of the report say the report was in
26 error because of misinformation.

27
28

1 There is another unrelated point, however, that I'm very
2 concerned about. Unfortunately, I do not have the time today to
3 delve into it, and that is hopefully for our next meeting.

4 You were the Deputy Director of the Institutions
5 division of prison security at California Institution for Men
6 during the unfortunate Cooper incident, and you were in charge of
7 security at that time, I understand. That is a very tragic and
8 serious matter.

9 I would like to have some information as to what your
10 role was in providing security at that institution; why the
11 security was apparently insufficient; who was in charge of the
12 classification of those prisoners as to high security and minimum
13 security; and I would say really some in-depth information on
14 that point.

15 It's unrelated to Mr. Rodriguez' case, but it is of
16 grave concern I would say to myself and the Members of the
17 Committee.

18 I'm certainly not saying you're remotely responsible,
19 but I think the fact that you appear to have had some
20 responsibility for that, I would like to delve into that, and I
21 expect you to give us the answers on the matter. I would like to
22 do that next week.

23 In the meantime, people who are concerned on the
24 Rodriguez situation, if you have something, please let us know.
25 I appreciate very much your concern and the concern of the
26 Chicano Correctional Association. But, it is very difficult for
27 us, in the view of both Mr. McCarthy and Mr. Armendariz'
28

1 rejecting the salient aspects of their own report, to conclude
2 otherwise, and that is that Mr. Doran engaged in discrimination,
3 or that he was even the effective person making the decision.

4 The fact is, I would suggest that because of the Cooper
5 matter, this probably be put over unless, Mr. Doran, you have an
6 instant and easy answer.

7 SENATOR MELLO: Mr. Chairman, might I make a suggestion
8 and motion that we defer action. It would appear that in the
9 next two weeks we have a busy calendar on the 20th with seven
10 persons left to appear. Can we defer action until a date in
11 August and ask the staff then to furnish the Committee with this
12 information?

13 CHAIRMAN ROBERTI: Well, if the Committee wants to,
14 that's fine.

15 My thought is that very frankly I would go as late as
16 late June. I don't think it's fair to Mr. Doran to hold him
17 over.

18 SENATOR PETRIS: May I ask a question while we have the
19 parties here?

20 CHAIRMAN ROBERTI: Senator Petris.

21 SENATOR PETRIS: I wanted to ask Counsel, you heard the
22 testimony of the other two employees. Are you taking the
23 position on the overall record, other than Mr. Rodriguez? For
24 example, there was very strong testimony of one of the employees
25 who said that for a large number of years no one, none of the
26 other Directors, which he named, did anything about a good
27 affirmative action policy, and that Mr. Doran has a very good
28 record in two different capacities.

1 Do you deny that? Does your organization deny that?

2 MR. ALCALA: Yes, we do deny that. And we'd like the
3 opportunity that's been suggested by Senator Roberti to give some
4 further documentation no that.

5 I also found it appalling to come in here to the Senate
6 Rules Committee, a Senate meeting, and have a report that we
7 present to you, signed by the Assistant Director and the
8 Director, which apparently finds this man guilty of
9 discrimination, and to have them testify to you that the report
10 that they signed was in error. I certainly hope all the other
11 reports from the Department aren't like that.

12 SENATOR PETRIS: Yes, that does raise some questions
13 which we need time to go into.

14 CHAIRMAN ROBERTI: I want to follow up on that. I think
15 Mr. Armendariz' testimony is very important, yet I think that we
16 have an obligation to pursue our questioning of Mr. Armendariz as
17 to why in the world such a report, if it was that incorrect,
18 found its way into somebody's personnel file. It drastically
19 effects both Mr. Rodriguez and Mr. Doran, and I would suggest
20 that reports like that shouldn't be made lightly. I'm not saying
21 they were, but it strikes me as strange, and I have to agree with
22 the attorney, Counsel here, that that is the case. Obviously, we
23 can't ignore their conclusions as to their own work.

24 So, I would suggest that we put this over until probably
25 the 27th. I don't want to wait too much longer. The position's
26 an important one, and we cannot maintain the position in a sort
27 of limbo.
28

1 So, thank you all very much.

2 MR. ALCALA: Thank you very much for your courtesy, all
3 of you Senators. Especially you, Senator Roberti.

4 (Thereupon this portion of the
5 Senate Rules Committee hearing
6 was terminated at approximately
7 3:00 P.M.)

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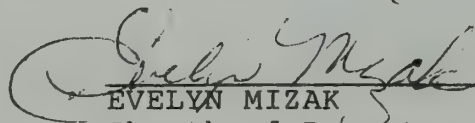
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That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

14th day of June, 1984.


EVELYN MIZAK
Shorthand Reporter

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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 20, 1984
1:30 P.M.

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12 SACRAMENTO, CALIFORNIA

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15
16 WEDNESDAY, JUNE 20, 1984

17 1:30 P.M.

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25 Reported by:

26 Evelyn Mizak
27 Shorthand Reporter
28

MEMBERS PRESENT

Senator David Roberti, Chairman
Senator Ray Johnson, Vice-Chairman
Senator William Craven
Senator Nicholas Petris
Senator Henry Mello

MEMBERS ABSENT

None

STAFF PRESENT

Cliff Berg, Executive Officer
Pat Webb, Committee Secretary
Rick Rollens, Consultant
Nancy Michel, Consultant
Bruce Samuel, Assistant to Senate Rules Committee

GOVERNOR'S APPOINTEES REQUIRED TO APPEAR

DONALD C. DE LUTIS, Member,
San Francisco Bay Conservation and Development Commission
JOHN CHRISTOPHER DUSTIN, Member and Vice-Chairman,
San Francisco Bay Conservation and Development Commission
ANGELO JOHN SIRACUSA, Member,
San Francisco Bay Conservation and Development Commission
ROBERT R. TUFTS, Member and Chairman,
San Francisco Bay Conservation and Development Commission

ALSO PRESENT

ELLEN JOHNNCK, Executive Director
Bay Planning Coalition
ELVA EDGER, San Francisco Bay Area
League of Women Voters
WILLIAM E. SIRI, President,
Save San Francisco Bay Association
GERALD MERAL, Executive Director,
Planning and Conservation League

1 DR. MICHAEL J. HERZ, Executive Vice President,
Oceanic Society

2 JEAN STARKWEATHER,
3 Marin Conservation League

4 BARBARA SALZMAN,
Marin Audubon Society

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P R O C E E D I N G S

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VICE-CHAIRMAN JOHNSON: All right. We have Donald C. De
Lutis, Member of the San Francisco Bay Conservation and
Development Commission.

Would you please come forward. Do you want to tell us a
little bit about yourself and why you think you should be
appointed to this position?

SENATOR PETRIS: Maybe he doesn't.

(Laughter)

MR. DE LUTIS: What would you like to know about myself?

VICE-CHAIRMAN JOHNSON: We'd like you to tell us a
little bit about yourself, why you think you want to serve in
this position. Is it the salary that you're interested in?

(Laughter)

VICE-CHAIRMAN JOHNSON: I don't think there is any, is
there?

MR. DE LUTIS: No, no there isn't any.

I think I'm primarily a business person. I've been in
the investment business for about 21 years in terms of my
background. I'm more into economic consulting and the money
management business in terms of my personal life and in terms of
business.

In terms of the Commission, I think it's important to
have a balance on the Commission in terms of understanding what's
trying to be done under the original acts to protect the Bay, and
have people who have an open mind in that respect. I believe I'm

1 that type that doesn't go in there with preconceived ideas and
2 notions, and therefore bring to the Commission a person who does
3 have an open mind in terms of being able to look at issues as
4 they come before the Commission without any preconceived ideas of
5 how votes should be cast.

6 VICE-CHAIRMAN JOHNSON: Do we have any questions of the
7 candidate here? Senator Petris, you represent the Bay Area. Do
8 you have any questions?

9 SENATOR PETRIS: I'd like to get some information.

10 You're familiar with the statute, I gather, creating the
11 Commission?

12 MR. DE LUTIS: Yes.

13 SENATOR PETRIS: Do you agree with its purpose?

14 MR. DE LUTIS: Yes, that's part of what I was saying
15 earlier about not having any preconceived ideas.

16 SENATOR PETRIS: You don't have any preconceived notions
17 on a particular application, but I would hope you'd have some
18 preconceived notions regarding --

19 MR. DE LUTIS: I was referring to the applications.

20 SENATOR PETRIS: Do you support the concept, the purpose
21 and so forth and have a balanced, fair treatment of the
22 applicants?

23 MR. DE LUTIS: Sure.

24 SENATOR PETRIS: And conservation?

25 MR. DE LUTIS: Absolutely.

26 SENATOR PETRIS: Balanced planned development and so
27 forth?
28

1 Are there any provisions in the statute that you do not
2 accept or don't agree with?

3 MR. DE LUTIS: No, not in the statute.

4 SENATOR PETRIS: Either in the substance or the
5 procedure?

6 MR. DE LUTIS: I think the concept is good from what I
7 understand about it and know about it.

8 SENATOR PETRIS: Have you run into any particular
9 problems administering it that should be brought to our
10 attention? I don't mean disputes between applicants and the
11 Commission, but problems in the statute?

12 MR. DE LUTIS: No, not particularly. I can't think of
13 anything off hand.

14 SENATOR PETRIS: Thank you, Mr. Chairman.

15 SENATOR MELLO: I just want to ask a brief question
16 about what your position is as far as further filling in of the
17 Bay. There are property owners who would want to, you know, fill
18 in areas that are not tidelands or Bay. Would you be supportive
19 of that or not?

20 MR. DE LUTIS: I try to take those applicants and issues
21 individually in terms of where they are and what the particulars
22 are of those applicants. There has to be -- I don't think that
23 you can have a policy that says that you cannot do anything on
24 the Bay, or a policy that says you can do any kind of building
25 that you want to. That's why I've tried to take the approach
26 that, you know, take each applicant as it appear before the
27 Commission, and then weigh it in reference to the foundation of
28 the BCDC in terms of why it was created under the Petris Act.

1 SENATOR MELLO: Let me put it another way. Cumulatively
2 do you feel that if we have further infilling of the Bay, say by
3 10 percent, would that have in your opinion some impact,
4 environmental impact on the Bay as a viable production of a
5 fishery resource, and recreational, and open space?

6 MR. DE LUTIS: Well, I don't know if 10 percent is the
7 number; I don't know if 5 percent's the number.

8 I think what the Act is trying to do, and has been
9 successful in doing over the years, is to try just filling up the
10 whole Bay with, you know, all kinds of projects, and therefore
11 try to preserve, you know, in some of the natural habitat of the
12 Bay, which is very important not only for the Bay but for the
13 long-term survival of all those who have access to the Bay in
14 terms of providing food, water, fish, whatever natural resources.

15 SENATOR MELLO: Do you think that we could reach a point
16 where it would be detrimental to have --

17 MR. DE LUTIS: It could be if it went unchecked
18 completely, yes, as it would any place. I mean, some cities in
19 this country, as you know, particularly back East -- I'm going
20 back, you know, a number of years -- where there was no Act to
21 protect the bays. What I'm talking about particularly is Lake
22 Erie, Buffalo, Cleveland, where they just kept building,
23 building, building and destroyed it. At one point even polluted
24 the whole Lake. So, I think you have to have some kind of
25 understanding or some kind of an act to protect that because of
26 the people that are living in those areas that need those natural
27 resources.
28

1 SENATOR MELLO: Let me ask you another question about
2 these houseboats that around Tiberon or Richardson Bay there by
3 Sausalito. It appears that this is sort of a squatters' rights
4 concept, where they have placed their boats there and this
5 becomes their home, and then the Coast Guard and others that have
6 tried to remove them from permanent residence, I guess they've
7 failed over the years.

8 What is your philosophy as it relates to these
9 houseboats?

10 MR. DE LUTIS: In terms of houseboats in general, I
11 would hate to see the bay just lined with houseboats as a form of
12 living conditions where it's just opened for anyone to build a
13 houseboat, pier, whatever they want to. Because where ever you
14 do that, you'd be infringing on the natural waterways and the
15 natural habitat of that particular area.

16 I'm not against the concept of houseboats, but I'd hate
17 to see it just be an open policy, where you just --

18 SENATOR MELLO: What do you do about trying to remove
19 some of the houseboats, or would you favor removing some of those
20 that are there at Richardson Bay?

21 MR. DE LUTIS: Well, I'm not familiar with all the legal
22 ramifications of trying to do that in terms of what can be done.
23 And there's a lot there, you know, that I just am not familiar
24 with. I know as you're saying it's been going on for a long
25 time, and what the legal rights to that or against that are, I
26 really don't know in terms of if it even could be removed.

27 SENATOR MELLO: Thank you.
28

1 SENATOR CRAVEN: Mr. Chairman, if there be no further
2 comments, do you want to call from the audience?

3 VICE-CHAIRMAN JOHNSON: Is there any opposition in the
4 audience?

5 SENATOR CRAVEN: Therefore, I move confirmation of
6 Mr. De Lutis with the recommendation of do pass to the Floor.

7 VICE-CHAIRMAN JOHNSON: Call the roll, please.

8 SECRETARY WEBB: Senator Craven.

9 SENATOR CRAVEN: Aye.

10 SECRETARY WEBB: Senator Mello.

11 SENATOR MELLO: Aye.

12 SECRETARY WEBB: Senator Petris.

13 SENATOR PETRIS: Aye.

14 SECRETARY WEBB: Senator Johnson.

15 VICE-CHAIRMAN JOHNSON: Aye.

16 SECRETARY WEBB: Senator Roberti.

17 CHAIRMAN ROBERTI: Aye.

18 (Thereupon the Committee then
19 took up reference of bills.)

20 CHAIRMAN ROBERTI: The next appointment is John
21 Christopher Dustin, Member and Vice-Chairman of the San Francisco
22 Bay Conservation and Development Commission.

23 MR. DUSTIN: Thank you, Mr. Chairman.

24 CHAIRMAN ROBERTI: Mr. Dustin, we'll ask you what we ask
25 all the Governor's appointees, and that is why you feel you're
26 qualified to assume this position.

1 MR. DUSTIN: I have prepared a brief statement in that
2 respect, and I'd like to read it to you, if I may.

3 CHAIRMAN ROBERTI: Very good.

4 MR. DUSTIN: I appear before you today seeking
5 confirmation as Commissioner and Vice-Chairman of the San
6 Francisco Bay Conservation and Development Commission.

7 The opening paragraph of the Commission's enabling
8 legislation, the McAteer-Petris Act, states in part:

9 "The Legislature hereby finds and
10 declares that the public interest
11 in the San Francisco Bay is in its
12 beneficial use for a variety of
13 purposes; ... that the bay is a
14 single body of water that can be
15 used for many purposes, from
16 conservation to planned de-
17 velopment; and that the bay operates
18 as a delicate physical mechanism
19 in which changes that affect one
20 part of the bay may also affect
21 all other parts."

22 That's Section 66600, the first paragraph.

23 I believe that I should be confirmed to this Commission
24 because I have demonstrated for almost a year now the commitment
25 and the ability to achieve the balance made explicit by this
26 opening paragraph.

27

28

1 Moreover, I believe this balance can and should be
2 enhanced to the maximum feasible extent through a well-
3 considered and comprehensive effort to achieve the best results
4 in each respective area where fundamental conflicts do not exist.

5 With respect to the BCDC permitting process, my
6 objectives can be summarized in three words: equity,
7 predictability, and expediency.

8 Number one, equity. The Commission must be mindful of
9 applicants' rightful interests which are codified in part in
10 Section 66606 in order to assure equitable deliberations on
11 permit matters. Similarly, the public's rightful access to tidal
12 waters must continue to be included whenever a permit is sought.

13 Number two, predictability. While it is impossible to
14 exactly define the requirements of the Commission in advance
15 owing to wide variations from one bayside parcel to another, the
16 Commission should move to adopt some easily understood guidelines
17 pertaining to its permit requirement so that applicants can
18 reasonably estimate in advance the costs of meeting Commission
19 requirements.

20 Item number three, expediency. The Commission should
21 continue to enhance its established record of expedient permit
22 consideration. Additionally, it should encourage where ever
23 feasible master permits embodied in the local general plan level
24 as a means of further expediting the permitting process, and thus
25 reducing the compliance and capital costs of applicants.

26 During my tenure on the Commission I have demonstrated
27 through numerous votes on permits and consistency determinations
28

1 my dedication to the concept of optimum balance as defined by
2 McAteer-Petris and other governing statutes. Further, my several
3 votes on cease and desist orders issued by the Commission
4 demonstrate that I am fully prepared to vigorously enforce
5 Commission findings and other applicable statutory mandates.

6 I have also shown that I am ready, willing and able to
7 undertake the careful study required to fulfill the
8 responsibility of a Commissioner and to follow up as needed.

9 Accordingly, I respectfully request your favorable
10 consideration regarding my confirmation.

11 CHAIRMAN ROBERTI: Are there any questions of Mr.
12 Dustin? Senator Mello.

13 SENATOR MELLO: Somewhat the same that I asked the other
14 gentleman. I guess all of the nominees today are for the BCDC.

15 Just generally, what is your philosophy about further
16 infilling of the Bay?

17 MR. DUSTIN: My philosophy is that fills should be
18 eliminated or reduced to the bare minimum. The Act is very clear
19 in that respect. It stipulates that fills should be authorized
20 only for certain key uses, which are defined as priority uses,
21 and only then when no other feasible upland site is available.

22 I'm in accord with that philosophy.

23 SENATOR MELLO: What about the other problem of the
24 houseboats that are now permanent residents, many of which are
25 there in Richardson Bay in Sausalito? Do we ever get around to
26 abating them if they're there illegally, or do we allow that
27 concept to continue, or to expand?

1 MR. DUSTIN: Clearly, houseboat uses, pure houseboat
2 uses, are not public trust uses. Since the Bay is a public trust
3 asset, houseboats are sort of fundamentally inconsistent with
4 that public trust.

5 To the extent that the boats are already there, they
6 have received permits, those that are in legal marinas and so
7 forth have received permits, and there have been negotiations
8 with State Lands Commission with respect to the use of the public
9 trust. I think it's clear that we have to curtail further
10 additional houseboat marinas and the use of houseboats, and try
11 the best we can to limit it to the present stock on hand so as
12 not to work an inequity against those people who already have an
13 investment in their houseboats.

14 I'm in favor of curtailing any additional supply of
15 houseboats.

16 SENATOR MELLO: Thank you.

17 SENATOR CRAVEN: May I, Mr. Chairman?

18 CHAIRMAN ROBERTI: Yes, Senator Craven.

19 SENATOR CRAVEN: Mr. Dustin, I'm not too familiar with
20 the houseboat problem in the area, but I want to ask to clarify
21 something in my mind.

22 Do the houseboats which are not in marinas have a
23 permit? Or are they just there?

24 MR. DUSTIN: I am not aware of any houseboats on the Bay
25 that have a permit that are not in a marina.

26 SENATOR CRAVEN: I see. In other words, the problem
27 therefore would be houseboats in marinas, and presumably when I
28

1 envision a marina, I think of a docking facility, a facility in
2 which to moor a boat. They would then be hooked up to sewage
3 lines; is that correct?

4 MR. DUSTIN: In many instances they are. There are a
5 number of instances where they are not, and that is one of the
6 rather thorny deliberations that we're undergoing right now.

7 SENATOR CRAVEN: I'm not familiar with San Francisco
8 Bay, but I'm familiar with San Diego Bay, where they have a
9 similar problem. I would hope that it doesn't, you know, get any
10 larger than it is, because I don't agree with it, frankly. I
11 think it should be stopped. That's a personal observation.

12 MR. DUSTIN: I don't believe anybody on the Commission
13 agrees with it, and we're working hard right now. We've got two
14 studies under way on that very subject.

15 SENATOR CRAVEN: Thank you, sir.

16 CHAIRMAN ROBERTI: Do you think the Governor's proposal
17 currently being heard on water diversion is sufficiently adequate
18 to protect San Francisco Bay?

19 MR. DUSTIN: Senator, I've written a letter on my own to
20 the Governor's Office sometime ago asking that certain priority
21 guarantees be included for the Bay. This bill and its associated
22 bills that are more or less walking along with it are in such a
23 state of flux right now that I'm, to be quite honest with you,
24 I'm not aware of the exact status of those bills.

25 CHAIRMAN ROBERTI: Neither are we.

26 MR. DUSTIN: But I do think we would like to see some
27 priority guarantees of fresh water inflow. It's clear that the
28 Bay environment needs that.

1 CHAIRMAN ROBERTI: Any other questions? Any opposition?
2 Senator Petris.

3 SENATOR PETRIS: I was interested in your reading of
4 part of the opening section of the Act. I want to refer to a
5 couple of other sections and ask you how you feel about them.

6 I assume you're familiar with the statute as a whole?

7 MR. DUSTIN: Yes, sir.

8 SENATOR PETRIS: And I asked Mr. De Lutis if he was
9 familiar with it, and if he supported it.

10 I think your indication in voting in favor of cease and
11 desist orders is an indication that you favor enforcing.

12 Let me talk about Section 66602, which is entitled
13 "Water-oriented land uses". It says:

14 "The Legislature further finds and
15 declares that certain water-oriented
16 land uses along the bay shoreline
17 are essential to the public welfare
18 of the bay area"

19 and that they include certain things which are recited, and then
20 the last part of the sentence says:

21 "... that existing public access
22 to the shoreline and waters of the
23 San Francisco Bay is inadequate
24 and that maximum feasible public
25 access, consistent with a proposed
26 project, should be provided."

27

28

1 Do you agree with that section?

2 MR. DUSTIN: Yes, sir.

3 SENATOR PETRIS: I've been told that you've made
4 statements that the public access part is very burdensome and is
5 outweighed by the economic cost to people who want to develop.

6 Is that an accurate quote on your part?

7 MR. DUSTIN: That's a misconstrual of things that I have
8 said. It certainly is not true.

9 The doctrine of public access is a sound doctrine, and I
10 have voted in many instances in favor of public access.

11 My concern is the number of hoops you make applicants
12 jump through in achieving the public access. And I guess I'm
13 more interested in greasing the skids, as it were, during the
14 permitting process.

15 I have no notion whatsoever in eliminating public
16 access.

17 SENATOR PETRIS: What are some of the obstacles that you
18 would remove? You have a 60-day period to either accept or
19 reject, so except for the staff time that's spent, you know,
20 before the application is filed, there isn't too much time for
21 the Commission to act. Is it within the 60-day period you're
22 talking about, or is it the Commission at the hearings that says:
23 Well, we'll grant you the permit if you do this and that?

24 Where is the obstacle that you see?

25 MR. DUSTIN: The 60-day period has been extended to 90
26 days, I believe, at the present time. It is a 90-day period.

27 SENATOR PETRIS: Right.
28

1 MR. DUSTIN: Nevertheless, that's expeditious, and I
2 have no problem with that window of opportunity.

3 But as you know, Senator, the Commission considers all
4 the applications after the applicant has already --

5 SENATOR PETRIS: Been with the staff.

6 MR. DUSTIN: -- been with the staff, but in addition,
7 has met all the local jurisdictions, all the federal
8 jurisdictions if any, such as the Corps of Engineers, the Coastal
9 Commission if that's applicable. It's quite possible for an
10 applicant to have been to 20 different agencies and governing
11 bodies before we see the application.

12 What I'm interested in doing is to make sure that our
13 regulation is reasonably well codified and simply understood, so
14 that a developer who is planning a project along the Bay, of
15 whatever sort or description, whether it's port use or
16 residential or whether it's commercial, understands what we're
17 going to require of him and has a good feeling going in and can
18 provide for that.

19 In many instances we see where somebody brings in a
20 plan, and somebody on the Architectural Design Review Board
21 doesn't find it's satisfactory and it's back to the drawing
22 board. And the process becomes a rather lengthy one for the
23 applicant and sometimes rather costly when he has to take his
24 architectural drawings back and start over again, or at least
25 make major modifications.

26 So I guess my primary interest is not in changing the
27 90-day time period, but in seeing if we can sort of channel our
28

1 deliberations in such a way that a high order of predictability
2 is developed over time as to these various requirements.

3 SENATOR PETRIS: Where are these delays? At the local
4 level before they come to the BCDC?

5 MR. DUSTIN: The entire process has become an onerous
6 one, as I'm sure many other folks have testified at various times
7 before you. What used to be a 6-month process is now sometimes a
8 three or four year process.

9 What I'm trying to do is to, where ever possible,
10 streamline the process to reduce the time, and also make it
11 easily understood so that there's no guess work involved on
12 behalf of the applications.

13 SENATOR PETRIS: What would you eliminate to speed it
14 up?

15 MR. DUSTIN: I wouldn't eliminate anything. I'd try to
16 consolidate where I could.

17 As an example, I referenced in my preliminary remarks
18 the idea of issuing --

19 SENATOR PETRIS: The master permit?

20 MR. DUSTIN: Master permits. If we can embody those
21 successfully at the general plan level with local jurisdictions,
22 that would eliminate that need for an additional hearing. Would
23 probably save six months' time, and six months' time when you're
24 paying interest at two over prime is significant savings.

25 SENATOR PETRIS: Wouldn't you be giving up part of the
26 present jurisdiction of the BCDC? You're in effect turning over
27 decisions to local government.
28

1 MR. DUSTIN: No, I would not be in favor of that. There
2 would also be a right of review if we felt that the agreement had
3 been violated by any party, we would have to step in and cease
4 that.

5 SENATOR PETRIS: How would you find out unless one of
6 the two complained?

7 If you had a friendly local agency to a big developer,
8 the local agency is either friendly to the developer or totally
9 intimidated by it, which has been known to happen, and they make
10 the deal.

11 How would it come to your attention? It wouldn't even
12 be before you, would it?

13 MR. DUSTIN: The answer is, it's hypothetical that what
14 you suggest could occur.

15 SENATOR PETRIS: Right.

16 MR. DUSTIN: I think that we would have to guard against
17 that. Perhaps some noticing procedure.

18 At this point, this is a very preliminary idea, but some
19 noticing procedure where the applicant would be obligated to
20 notify the Commission or the city, the jurisdiction involved,
21 would be obligated to notify the Commission that work was being
22 undertaken pursuant to a master permit and sending in the plans
23 and so forth, so that we could continue to monitor the progress
24 of the area.

25 SENATOR PETRIS: Now, the enlargement of the local role
26 by consolidating or otherwise and diminution of the BCDC role
27 makes me very nervous for the reason that one of the reasons the
28

1 Legislature put this whole thing together was because there was
2 no overall view of the Bay, and local jurisdictions were just
3 mutual back scratching agencies. You know, one person's
4 recreation facility is another person's dump. And yet they
5 agreed with each other so that each local jurisdiction could get
6 whatever it wanted.

7 We don't want to revert back to that. So, I'm very,
8 very antsy, you might say, about a notion of, well, let's have
9 the locals do more, and just regulate the BCDC to a more remote
10 monitoring position.

11 I would have to examine a change like that extremely
12 carefully, because in my judgment it could well open the door to
13 going a step backward instead of forward. In the effort to get
14 more streamlining, we might give up something very basic.

15 You remember that when the Commission was created, there
16 were only about seven miles of coastline, or rather Bay access,
17 open to the public throughout. There's more than that now. I
18 don't know what it is right now, but it's not an awful lot.

19 To get back to the access thing for a minute, you don't
20 have any problem with the current provisions in access, and you
21 don't think it should be diminished in any way?

22 MR. DUSTIN: No, sir. I live on the Bay, and I have
23 public access outside my house, and it's a wonderful asset to have.

24 SENATOR PETRIS: And any statements attributed to you to
25 the contrary are erroneous?

26 MR. DUSTIN: Yes. We dealt with one statement that was
27 attributed to me, and I told you that that statement was
28 misconstrued.

1 SENATOR PETRIS: That's the only one you know about?

2 MR. DUSTIN: Yes. I would have to examine any other
3 allegations made sort of on a point-by-point basis. But that one
4 was incorrect.

5 SENATOR PETRIS: Mitigation. I understand you're very
6 hostile to the idea of mitigation, and that in some cases you
7 even tried to persuade an applicant who's already agreed to
8 mitigation, and agreed to either the exchange of land or paying
9 the money into the bank, the pool, or fund, whatever we call it,
10 tried to persuade him to withdraw from that and reduce the
11 amount, or diminish agreement that had already been entered into
12 by the applicant with the staff.

13 Can you comment on that?

14 MR. DUSTIN: That's the most fanciful assertion I've
15 heard all day. I don't know where it came from. I have never
16 made a statement like that on record.

17 I have gone on record, in fact, during our study period
18 in saying I favor the concept of mitigation, that it was
19 important to me to see that it was equitably, fairly, judiciously
20 applied.

21 SENATOR PETRIS: It seems to me that one of those
22 reports, I don't have it before me but I saw it in the press,
23 where an applicant had agreed to X dollars, and at the meeting
24 you made a public statement that that was excessive, and
25 persuaded the applicant to agree to a reduction. And it was
26 actually done.

27 Are you saying that was erroneous?
28

1 MR. DUSTIN: That is incorrect, yes. That's bad
2 information.

3 SENATOR PETRIS: It's not true?

4 MR. DUSTIN: I think you're referring to the Emory Cove
5 Marina project.

6 SENATOR PETRIS: I don't remember the name. It was last
7 year sometime.

8 MR. DUSTIN: I took exception to the imposition of
9 additional mitigation, which I might add the applicant was not in
10 favor of. We were able to reach an accommodation where the
11 additional mitigation was imposed over time as the marina was
12 developed.

13 SENATOR PETRIS: Rather than all at once?

14 MR. DUSTIN: Rather than all at once.

15 SENATOR PETRIS: Let me check here further and see how
16 many more of these you can knock down.

17 Here's one, the Encinal Terminals case, happens to be in
18 my district. The owner is a good friend of mine.

19 There had been an agreement between him and the agency
20 for a mitigation fee, \$50,000, and at the meeting you told the
21 owner -- which is all right; it's your right to do it. I just
22 want to know what your view is -- that you thought that was too
23 much. It was an \$80 million project. And the Commission had
24 reached agreement with him for mitigation to that extent so they
25 could use it to replace the loss, whatever it was.

26 But applicant responded that negotiations and so forth,
27 he thought it was reasonable and he would just as soon stick with
28 it.

1 Do you remember that case?

2 MR. DUSTIN: Yes, I do. I voted in favor of that as
3 opposed by staff. I questioned the applicant during the hearing
4 about how that was arrived at, and whether or not he was in
5 accord with that.

6 SENATOR PETRIS: Whether he was under duress, maybe?

7 MR. DUSTIN: Yes. I guess I asked him that sort of
8 inversely, you know, in a reasonably diplomatic fashion. But at
9 the same time I also stipulated that the passing of that
10 particular permit, which was passed, it was agreed by the
11 Commission that that would not set a precedent insofar as
12 additional mitigation was concerned as to port priority uses.

13 The problem I had in that particular case was the fact
14 that this fellow was redeveloping an area in accordance with the
15 port priority use, and he was agreeing to the mitigation, but
16 there was some questions among some of the Commissioners as to
17 how much additional mitigation in addition to the public access
18 he was providing should be required. So, it was important that
19 we not establish a precedent.

20 SENATOR PETRIS: But the Terminals case wasn't
21 additional. It was the agreed upon amount. It wasn't something
22 being imposed on them on top of that at the hearing by, maybe, a
23 member of the Board.

24 MR. DUSTIN: It had been agreed by all parties, and that
25 was the way the vote went, and I believe the vote was very close
26 to unanimous.

27 SENATOR PETRIS: You supported that?
28

1 MR. DUSTIN: Yes, sir.

2 SENATOR PETRIS: Do you still feel now that that might
3 have been excessive, or was it before you got all the
4 information?

5 MR. DUSTIN: My recollection was that we did not have a
6 terrific amount of information with respect to the imposition of
7 this particular mitigation. What's more, it raised some sort of
8 philosophical issues that we hadn't had a chance to address as a
9 Commission at that point. So what I wished to do was to not
10 penalize the applicant, to vote in favor of his proposal. He was
11 fully in accord with it. I think he made it as a gesture of good
12 faith to the community. I think he did it for the right reasons,
13 but at the same time, reserve the subject generally for ongoing
14 discussion with the Commission.

15 SENATOR PETRIS: Do you think the concept of mitigation
16 is a valid one and a desirable public policy?

17 MR. DUSTIN: Yes, sir. I've said so many times. I
18 think it would permit projects to go through that might not
19 otherwise be permissible under our law.

20 SENATOR PETRIS: Do you think the BCDC Act itself is
21 good public policy?

22 MR. DUSTIN: I'm fully in accord with the McAteer-Petris
23 Act in every respect.

24 SENATOR PETRIS: Are you still doing work in the West
25 Bay Building Industry Association?

26 MR. DUSTIN: I serve on the Board of Directors, Senator.
27
28

1 SENATOR PETRIS: Do their members have applications from
2 time to time?

3 MR. DUSTIN: I cannot recall having seen an application
4 from any West Bay member, no.

5 SENATOR PETRIS: How extensive is your own real estate
6 development activity? Is that your full-time work?

7 MR. DUSTIN: Senator, I'm an appraiser and consultant to
8 the real estate and development industry. I do a lot of
9 evaluation work and that sort of thing.

10 SENATOR PETRIS: You don't have your own projects?

11 MR. DUSTIN: No, I don't, sir.

12 SENATOR PETRIS: You advise others on theirs?

13 MR. DUSTIN: Yes, sir. In a situation like that where I
14 had a client relationship with any of these applicants, I would
15 feel obligated to disqualify myself from voting.

16 SENATOR PETRIS: Well, apparently it hasn't come up.

17 MR. DUSTIN: It has not come up yet.

18 SENATOR PETRIS: I have a couple more. I'm sorry I'm
19 shifting here.

20 I'm looking at your own statement, position summary,
21 with respect to BCDC, which you submitted to us.

22 You say at the outset:

23 "I believe that the development
24 part of the Bay Conservation and
25 Development Commission has been
26 chronically under-represented for
27 entirely too long."
28

1 And further down you indicate a desire to correct that.

2 Can you expand on that for us? Do you know of a lot of
3 projects that have been turned down in the past that you would
4 have supported or vice-versa?

5 MR. DUSTIN: It's not that the projects have been turned
6 down, Senator. It's many projects have been passed. The
7 Commission, after all the original legislation, did recognize
8 that certain bayside development was important, and it was
9 important to accommodate those uses.

10 At the time there were very few, if any, business
11 representatives on the Commission who understood the, sort of the
12 economic dynamics of going through the travail of the permitting
13 process. I thought it was important to have somebody who was
14 empathetic, who had been there before, and understood their
15 needs, and not to throw away the intent of the Act, but be
16 empathetic to the applicant and try to understand them.

17 SENATOR PETRIS: Do you have any outstanding examples
18 that kind of bothered you over the years?

19 MR. DUSTIN: Yeah, one, and I voted for it. It was the
20 Emory Cove Marina the second time around, where the additional
21 \$100,000 was required of them. That troubled me, I would say.

22 SENATOR PETRIS: How about prior to your service, prior
23 to your appointment?

24 MR. DUSTIN: I think that there were some -- the way the
25 projects were designed in some cases, and what the applicant was
26 required to do, and he was required to do it in some cases have
27 been --
28

1 SENATOR PETRIS: A little too tough?

2 MR. DUSTIN: -- a little too tough.

3 SENATOR PETRIS: My impression has been that there's
4 been a pretty good balance. We've had three administrations now.

5 Do you feel that there was any substantial change in the
6 policies of the BCDC, say, under the Reagan administration
7 appointees as compared to the prior ones or later ones?

8 MR. DUSTIN: I think --

9 SENATOR PETRIS: Has the pattern been fairly much the
10 same?

11 MR. DUSTIN: I think there's been somewhat of a shift.
12 I think that the Commission has evolved, which is a natural
13 process. And I think that there have been different philosophies
14 expressed over time on the Commission.

15 I don't think there's been any wide swings, nor do I
16 think that the present Commissioners have instituted a wide swing
17 in terms of philosophy. There have been some changes.

18 SENATOR PETRIS: Can you describe the changes?

19 MR. DUSTIN: My recollection is that when the Commission
20 was first formed as a tentative, as a temporary organization in
21 '65, and when it was later constituted in 1969, that the
22 Commission was represented by a broad cross section of people
23 representing the environmental community and the development
24 community as well.

25 My belief is that a good deal has been added
26 legislatively to the Commission's duties over time, and that for
27 a period the balance swung away from the business element and
28

1 more towards the conservation side, at least in terms of the
2 representation on the Commission.

3 I think that to the extent that the new Commission has
4 been operating, that that signals a return to the way it was
5 before.

6 SENATOR PETRIS: Let me get over to a couple other
7 statements. I'm sorry, Mr. Chairman.

8 You say in your statement in the second paragraph:

9 "As a representative of the private
10 sector in the development process, I'm
11 intimately familiar with the terrific
12 economic price that often must be paid
13 by private citizens ..."

14 You mentioned that before.

15 "... who are the victims of needless
16 bureaucratic obstructionism, and I
17 will work to eliminate any vestiges
18 of such obstructionism from BCDC."

19 Did you find that kind of obstructionism so far,
20 "needless bureaucratic obstructionism" within the BCDC since
21 you've been a member?

22 MR. DUSTIN: I wasn't referring specifically to BCDC
23 when I made that statement. I was referring to the general
24 permitting process, which has become a long and convoluted one
25 over the past 15 years.

26 SENATOR PETRIS: Well, I'm sure we can all find examples
27 of that, and I'd have to agree with you in a lot of areas. But
28 how about BCDC itself? Did you find any of these vestiges?

1 MR. DUSTIN: I find that the staff of BCDC by and large
2 is an excellent staff, hard working and well-intentioned.

3 SENATOR PETRIS: Do you think they're fair-minded?

4 MR. DUSTIN: I think that since the Commission has
5 essentially been reconstituted over the past year, that staff has
6 properly sensed a slight philosophical change and tried to
7 respond to it. There may be one or two minor areas with minor
8 problems that continue to exist, but there's nothing significant.

9 SENATOR PETRIS: The last point I have is the
10 development of infill projects within incorporated cities, as an
11 example, are probably best left to the sole discretion of the
12 local governments. Now, that's a point I referred to earlier.

13 Do you still believe that that should be done? If
14 there's a fill project that happens to be within the city limit,
15 that it should be left entirely up to the city to decide?

16 MR. DUSTIN: No, sir. The infill project I'm talking
17 about has nothing to do with bay fill. It has to do with -- if
18 you have two commercial buildings side by side, and a lot in
19 between them, it makes sense to me to try to master permit in
20 such a way that somebody who wants to come along and build a
21 third building in between the two existing buildings could do so
22 expeditiously. That was what I was trying to get at.

23 SENATOR PETRIS: Thank you.

24 Thanks, Mr. Chairman.

25 SENATOR ROBERTI: Senator Craven.

26 SENATOR CRAVEN: Mr. Dustin, a former colleague of
27 yours, I think now presently a colleague of the Senators, has
28

1 said in a letter to our Chairman these words, that you as Vice-
2 Chairman:

3 "John Dustin has made public
4 statements challenging the basic
5 structure and fundamental goals
6 of BCDC."

7 Based on what I've heard you say, I would presume that
8 you would deny that allegation?

9 MR. DUSTIN: I do deny it generally. I'm wondering
10 specifically who it was that said it and in what context.

11 SENATOR CRAVEN: Senator McCorquodale said that. And he
12 started his letter by saying that as a former member of the
13 Commission, he would like to express his graves concerns
14 regarding -- he doesn't single you out. He talks about Mr.
15 Reading as well as yourself. And he uses that in the second
16 paragraph of his letter.

17 Based on what you have said, I think that I glean that
18 you, in fact, uphold the tenant of the Commission, but you
19 reserve the prerogative to comment upon it or its implementation
20 as you see it.

21 I personally find nothing wrong with that, and I think
22 that all of us have to appreciate that people have different and
23 somewhat diverse opinions. And I think that as long as it
24 doesn't shakes the very foundations of what you're duty-bound to
25 uphold, I see no reason to really get excited about that.

26 But it seems to me, based on what I've heard through
27 Senator Petris' interrogation, you have by virtue of some of your
28

1 statements, which you obviously make rather openly, been either
2 misconstrued, misinterpreted, or somebody's misinformed somewhere
3 along the line.

4 Am I correct in assuming that?

5 MR. DUSTIN: I try to be forthcoming, because I think
6 that's good public policy. However, some of these statements --
7 I've never spoken with or met Mr. McCorquodale, and I'm ignorant
8 as to where he generated his information.

9 SENATOR CRAVEN: I see. Well, perhaps you were not on
10 the Commission when he served as a member, and he was, of course,
11 prior to his advent here, was a supervisor, so that's where he
12 was.

13 We have some witnesses here.

14 CHAIRMAN ROBERTI: Any witnesses in support? Yes,
15 please come forward.

16 Please indicate your name and if you represent someone
17 other than yourself.

18 MS. JOHNCK: My name is Ellen Johnck, J-o-h-n-c-k. I'm
19 Executive Director of an organization called the Bay Planning
20 Coalition.

21 We're a public interest nonprofit association formed in
22 the fall of 1982. Our primary purpose is to achieve a fair and
23 reasonable permit process in San Francisco Bay.

24 Our membership is a very broad group. And interestingly
25 enough, we are -- what we consider ourselves is an experiment in
26 democracy. Our members are a broad range of permit applicants
27 consisting primarily of water-dependent industry owners and
28

1 associated businesses, such as ports, maritime construction
2 companies, dredging companies, engineering firms, marinas,
3 tourism facility operators and owners, local government entities,
4 harbor districts, flood control districts, mosquito abatement
5 districts, et cetera.

6 CHAIRMAN ROBERTI: Users, in other words.

7 MS. JOHNCK: Right, we are the users, exactly.

8 You know, our primary goal is to see that the laws
9 governing the land use process and the permit process in San
10 Francisco Bay are interpreted to their intent. What we're really
11 striving to do is to see that explicit guidelines and procedures
12 are established.

13 In this regard, what we do, we've been working with the
14 staffs of both BCDC and the Army Corps of Engineers and the Water
15 Board in an effort to make sure that the process is a predictable
16 one, that applicants know what to expect when they do go in for
17 an application for whatever use.

18 And, of course as you all know, and Senator Petris, and
19 we've talked about the McAteer-Petris Act, that water-dependent
20 uses, of which are membership is predominated by, their uses are
21 clearly allowed in the Bay. And obviously there are some very
22 strict standards, and rightly so, by which those uses are allowed
23 to be.

24 But we're saying: Let's be a little more predictable.
25 Let's get some very explicit procedures and definitions of terms.
26 Let's talk about mitigation.

1 I believe, and as I've been going around in the last few
2 years, many people have a different idea about what mitigation's
3 all about. I don't think too many people really disagree with
4 the concept of mitigation and the need for it, but how much, what
5 is fair and reasonable, when and where. These are the questions
6 that at the moment the Commission and staff are coming up with
7 some guidelines and criteria on, which we find highly acceptable.

8 So, as our purpose of our association, when we find that
9 people are being recommended to BCDC or the Water Board, or any
10 other type of regulatory agency in the Bay, we endorse
11 individuals that espouse the views of moderation, of balance, of
12 trying to make some more predictability out of the permit
13 process.

14 In this fashion, we do support the four group. We have
15 no reason to single out Mr. Dustin for whatever reason
16 whatsoever.

17 I think, you know, the press at times will pick up on
18 statements that people say and change them around because of a
19 preconceived policy, predisposition that they might have.

20 So, in my knowledge of Mr. Dustin, and the way he has
21 operated on the Commission in the last nine months, I think has
22 been highly acceptable, and I think he's really trying to work
23 for a fair and reasonable permit process, which is our goal.

24 Thank you.

25 CHAIRMAN ROBERTI: Thank you very much.

26 Senator Petris.
27
28

1 SENATOR PETRIS: Have you been attending meetings of the
2 Board?

3 MS. JOHNCK: Yes, I have.

4 SENATOR PETRIS: There's a line of questioning I forgot
5 of Mr. Dustin, so I'll ask you.

6 One of the complaints made against Mr. Dustin is that
7 when he acts as Chairman, he is very rough on witnesses,
8 sometimes rude, sometimes rude with his fellow members of the
9 Commission, cutting people off, very high-handed with the gavel.

10 As a supporter of his I suppose you'd deny that, but
11 could you comment on that? Have you heard such complaints or
12 seen them at meetings complaining?

13 MS. JOHNCK: Well, I think chairmen have different
14 styles. I've actually been Chairman of the Coastal Commission
15 for two years.

16 I do think there is a way of handling the gavel and a
17 way of not. There have been times when Mr. Dustin maybe has not
18 had as much experience as maybe other chairmen have had in using
19 the gavel. I would say that, I guess, to be diplomatic.

20 But I just think he's been, you know, generally good. I
21 do think -- I mean, the recommendation of Mr. Tufts as Chairman
22 is something we would support. But I think from the very
23 beginning, when after Mr. Reading wasn't there for a few of the
24 times and Mr. Dustin took over, over a period of about three or
25 four months, he style improved, and he learned how to work with
26 the group, and I think it just takes time.

27

28

1 SENATOR PETRIS: So the remedy is more presiding;
2 presiding more to get experience?

3 MS. JOHNNCK: Right.

4 CHAIRMAN ROBERTI: I hate it myself.

5 (Laughter.)

6 SENATOR PETRIS: I'm interested in the experiment in
7 democracy.

8 Does your group study the problems and then take a
9 position and make recommendations by way of resolution, or
10 motion, or something?

11 MS. JOHNNCK: What we're focusing on is long-term
12 planning and policy issues.

13 SENATOR PETRIS: How do you do it?

14 MS. JOHNNCK: We take an issue, for instance, mitigation.
15 We've identified four areas that we think need some explicit
16 procedures developed on. Mitigation is one. We've been -- we've
17 done research on the issue; we published a report, which I'd be
18 happy to send you, but I think you actually have a copy of it in
19 the office. Based on that, we will go into staff and what we've
20 done through the mechanism of the vehicle of the administration
21 review, the review of administrative regulations, and we
22 recommend it.

23 SENATOR PETRIS: What I'm interested in is your
24 procedure. You have how many members?

25 MS. JOHNNCK: One hundred.

26 SENATOR PETRIS: Are you governed by a Board of
27 Directors?
28

1 MS. JOHNCK: Yes, we have a 24-member Board of
2 Directors.

3 SENATOR PETRIS: How is the official position of your
4 group determined, by the Board, or the general membership or
5 both?

6 MS. JOHNCK: Well, the Board of Directors essentially --
7 any policy issues are debated among the Board members.

8 SENATOR PETRIS: How is it resolved? Do you have a
9 motion?

10 MS. JOHNCK: Yes, oh, yes, there's a motion.

11 SENATOR PETRIS: What's the vote requirement for the
12 motion?

13 MS. JOHNCK: Majority.

14 SENATOR PETRIS: Thank you. That may be a vanishing
15 concept in our society. I just thought I'd ask you.

16 MS. JOHNCK: Right.

17 SENATOR PETRIS: It may go up to 80 percent someday.

18 SENATOR CRAVEN: It's also a little different than the
19 Coastal Commission rules, as I recall. We had different rules.
20 We had rules on the Coastal Commission years ago that defied
21 anybody's description: quorum, rules of quorum. Maybe you
22 didn't have it or don't have it in the area of your Coastal
23 Commission activity, but back 10 or more years ago, why, we lived
24 with something that I thought was somewhat alien to democracy,
25 but be that as it may.

26 MS. JOHNCK: By the way, all our research and potential
27 policy decisions that would be decided by the Board are
28

1 circulated to our membership through the mail. And they have the
2 opportunity to comment.

3 SENATOR CRAVEN: Is the Board elected by the other 75?

4 MS. JOHNCK: One-third of our Board retires every year
5 and we hold an election, and the membership --

6 SENATOR CRAVEN: So in fact they are representative of
7 the whole.

8 MS. JOHNCK: Of the whole membership, correct.

9 SENATOR CRAVEN: That seems to be in the best interests
10 of democracy.

11 CHAIRMAN ROBERTI: Any other supporters? Yes.

12 MS. EDGER: I'm neither a support nor an opponent.

13 CHAIRMAN ROBERTI: I guess you get to come up next,
14 then.

15 MS. EDGER: I'm Elva Edger of the San Francisco Bay Area
16 League of Women Voters.

17 Our initial concern with the new appointees has
18 modified. As they have been members of the Commission, they have
19 gradually been learning their jobs, and I think are doing quite
20 well now.

21 As for Mr. Dustin here, his original enthusiasms have
22 modified, and I think he's doing a very good job as Vice-Chairman
23 now. We will be watching with interest.

24 CHAIRMAN ROBERTI: Thank you.

25 Opposition.

26 MR. SIRI: Mr. Chairman, my name is William Siri. I'm a
27 resident of El Cerrito and appear before you as President of Save
28 San Francisco Bay Association.

1 Most of our 21,000 members live in the Bay Area. Until
2 20 years ago, when BCDC was created by the McAteer-Petris Act,
3 the San Francisco Bay was largely steadily dwindling from
4 indiscriminate filling, and its shore was largely an onerous
5 junkyard with little public access.

6 Local government, as has already been noted here, and
7 private owners treated the Bay primarily at that time as real
8 estate, with little understanding of other long-range natural and
9 economic values of the Bay.

10 Now, we're not opposed, even though we support the
11 preservation of Bay waters and the protection of its natural
12 assets, both as natural assets and for the economic values, we
13 are not opposed to appropriate development.

14 But we think it is essential, we think that such
15 development is both necessary and desirable, but we also believe
16 that public access and mitigation of damaging impacts must be a
17 part of all development.

18 Now, Senator Petris will know that for the past 20 years
19 we have monitored activities in the Bay and attended every BC
20 meeting during that time since its creation. We also share the
21 view that's widely held nationally that BCDC is an exemplary
22 regional agency for its effective, balanced, efficient, and
23 nonpartisan performance. We regard its continuing integrity of
24 purpose as absolutely vital to the Bay Area.

25 With regard to Mr. Dustin, I wish we could be assured by
26 his words here today. I wish I could even believe them.

27
28

1 His performance on BCDC, and his public statements
2 demonstrate that he has not always had -- served the intent and
3 the mandates of the McAteer-Petris Act, or that he's fairly
4 represented the public interest, as is expected of a public
5 appointee by the Governor.

6 Let me run down a few items here which we are fully
7 prepared to document, if you wish.

8 Mr. Dustin has repeatedly stated that public access is
9 too often an undue burden on developers, and he has acted
10 accordingly. Now, maximum public access is mandated in the
11 McAteer-Petris Act, and also in the long-established Bay
12 planning.

13 In the past ten years, permits for \$1½ billion in
14 projects have been granted by BCDC, and nothing of any great
15 significance has been denied. In fact, only four permits, among
16 all those that have been granted.

17 Further more, the cost of providing public access has
18 been a trivial part of the expenditures for development. There's
19 no way in which this can generally in general be considered a
20 burden on developers of these large projects. And in turn, these
21 small expenditures, small fractions of development costs, have
22 provided the public enormous recreational, aesthetic, and
23 indirect economic benefits.

24 Mitigation is another area. Mitigation of project
25 impacts on the Bay is a fundamentally important function of the
26 BCDC and permitted, of course, in the Act.

27
28

1 Again, Mr. Dustin has repeatedly demonstrated by words
2 and action, despite his words today, his opposition to mitigation
3 under many circumstances, arguing it is a burden on projects
4 again. On more than one occasion, sitting as Chairman now, he
5 attempted arbitrarily to reduce or eliminate mitigation, even
6 though the applicant willingly agreed to the cost and thought it
7 fair.

8 The record will also show that in the case of
9 mitigation, that this has been a small part of project costs, and
10 the benefits in turn have been immeasurable to the public.

11 As to the acceptance of the McAteer-Petris Act by
12 Mr. Dustin, Mr. Dustin has informed us he believes, for example,
13 and has stated here today again, that permit authority should be
14 returned to local governments. This is what he has said in
15 effect to date, what he has said before, and what he is reported
16 to have said to others.

17 It was to terminate the disaster which that process had
18 created that BCDC was created or formed by Senator Petris in the
19 first place. It was to avoid just that situation and its
20 disastrous effects.

21 Even if BCDC retained compliance power, as Mr. Dustin
22 has also incidentally suggested, the permit process would then be
23 a lengthy and costly exercise as a result of endless appeals to
24 BCDC and the litigation that process would generate.

25 Now, as Vice-Chairman, Mr. Dustin might on occasion, if
26 he is confirmed, sit as Chairman. His performance as Acting
27 Chairman in past months has too often been disruptive, arbitrary,
28

1 and abusive. No public agency can long afford that level of
2 misconduct in its chairmen.

3 Now, a public member of BCDC has an obligation to
4 represent the public interests, or at least to exercise a
5 balanced judgment in administering the McAteer-Petris Act and the
6 Bay plan.

7 Mr. Dustin's performance thus far has proved otherwise.
8 By act and word he clearly represents developers' interests
9 without serious concern to the public interest.

10 We recognize -- now, I must emphasize this -- we do
11 recognize Mr. Dustin's right to advance developers' interests,
12 even if that need be at the expense of the public interest. But
13 Mr. Dustin should do this as a private individual, and not as a
14 member of BCDC, particularly as a public representative member of
15 BCDC. He should do this as a private citizen or as a
16 representative of developers' organizations in which, as you
17 know, he plays an active role, but not as a member of BCDC.

18 Mr. Chairman, we appeal to this Committee to encourage
19 Mr. Dustin to pursue his aims in the proper context, namely by
20 not confirming his appointment to BCDC.

21 CHAIRMAN ROBERTI: Thank you very much.

22 Senator Craven.

23 SENATOR CRAVEN: Would you give me your name again?

24 MR. SIRI: William Siri, resident of El Cerrito,
25 S-i-r-i. It's iris backwards.

26 SENATOR CRAVEN: I had trouble hearing you, I'm very
27 sorry.

1 I was interested in what you had to say. You mentioned
2 several things about public access, mitigation, and so forth, and
3 then you talked also about the public interest.

4 Is public interest what you determine in your own mind
5 is best for the public?

6 MR. SIRI: No. The answer to that in general is yes,
7 what is best for the public at large, taking all factors into
8 consideration.

9 Now, at times that may be reflected as a need for
10 developing a certain facility, or permitting a certain activity
11 to occur. At other times it may require the enforcement of some
12 kind of conservation measure. Whatever the proper balance is.

13 SENATOR CRAVEN: I understand that and I of course --

14 MR. SIRI: So that in the long run, there is a net
15 public benefit.

16 SENATOR CRAVEN: Yes. I'm not referring to any specific
17 in any sense at all.

18 What I'm trying to get to is, in other words you have a
19 very clear vision of what you think constitutes the public
20 interest. Now, that's undeniable. Obviously you have made up
21 your mind what you think is in the best interests of the public.

22 Now, is it not conceivable that the applicant or the
23 nominee also has in his mind just as clear a thought, and that
24 those two could be divergent?

25 You know, you said you're elected to do a specific job,
26 or you were placed there to do a specific job. And all I have to
27 do is to look at my colleagues, both of whom I revere, and
28

1 philosophically we are really not on the same wavelength. We are
2 attuned to different tremors, if you will, and we react
3 accordingly.

4 Now, I never have a tendency to excoriate either Senator
5 Petris or our Chairman, Senator Roberti, because they don't agree
6 with me. I recognize that they march to their drummer, and I to
7 mine.

8 And I mention that only to indicate that because you
9 find a person with whom you may not philosophically agree, it
10 doesn't mean that they're incapable of doing what should be done.

11 Maybe that's a question on my part of faith, but be that
12 as it may, he's one, as I understand it, of 27 members of this
13 organization. And he would have to be one hell of a lot more
14 powerful than I think he is in order to win the day based on any
15 diverse philosophy he may hold, because there must be 26 other
16 men and women, tried and true, who maybe agree with you.

17 For that reason, I see that he poses no great danger.
18 I'm willing to stipulate that he may not agree with you, and
19 maybe he is wrong in some instances, but the correctness or the
20 incorrectness of his attitude would not necessarily be the
21 prevailing one, in my judgment, with so many other people who
22 obviously you don't have any objection to because you haven't
23 made mention of that fact, and I just presume that you would
24 agree with those other people, feeling that they truly are moving
25 in the public interests.

26 MR. SIRI: Senator Craven, may I answer that? You asked
27 me a question.
28

1 SENATOR CRAVEN: Certainly.

2 MR. SIRI: I recognize, and we all recognize, that all
3 of us have differing opinions, and the scale runs from A to Z.
4 We accept that. We recognize that on BCDC there is a balance;
5 there has always been a balance of people with divergent views.
6 But generally they have come out and supported; that is, the net
7 effect has been of support and exercise of the intention and the
8 mandates of the McAteer-Petris Act.

9 Now, among the Governor's appointees there are views in
10 the other appointees that are quite different from ours. We
11 respect them. We respect them, just as you have said. Now,
12 those views are different from ours, and they're different in
13 degrees.

14 I am talking here about a man who has demonstrated by
15 his performance on BCDC that not only does his view differ from
16 ours, but he has not been willing to adhere to the spirit and the
17 mandates of the McAteer-Petris Act. If he does not like that Act
18 and BCDC, then he should try to change it, but let him change it
19 as a private citizen.

20 It's not the difference that we're concerned about, but
21 rather his clear indication as demonstrated that he's not fully
22 in accord with the Act, and the spirit and the mandate of that
23 Act. Whereas, the others we may differ with, that's a matter of
24 degree.

25 SENATOR CRAVEN: I understand that, and I think you
26 answered it very, very well.

27

28

1 Sometime when you have time available, we would like to
2 take you on a little tour of this operation here. And you may
3 find a certain hauteur vested in chairmen, not necessarily vested
4 in them, but donned, I guess is a better word, by chairmen that
5 would absolutely stagger you. The manner in which they handle
6 meetings is absolutely unconscionably bad in some instances.

7 Ask some of the lobbying force what they think, if they
8 will give you a frank expression. They don't say that publicly,
9 obviously, because they have to appear before them.

10 In other words, those things do happen. It doesn't
11 happen in this Committee because this is an excellently run
12 committee. As a matter of fact, I think you'll find in most
13 Senate committees that that is the case.

14 One other point that you touched upon, and that is that
15 he is not upholding the tenant or the spirit of it. It may
16 surprise you to find that there are in fact people who serve here
17 in elected office in what I refer to, and perhaps my colleagues
18 do as well, we're referred to as politicians. I don't look upon
19 myself as such; I feel I work in government, and that's the way
20 I've always looked at it because I've done it for 25 years.

21 But there are a lot of people in that role who are
22 against government, and yet they're still here, and they seem to
23 come back regularly.

24 SENATOR PETRIS: One of them's in the White House.

25 (Laughter.)

26 SENATOR CRAVEN: That comment, we'll let Senator Petris
27 have that opportunity. I was not referring to that gentleman,
28 whose name escapes me for the moment.

1 (Laughter.)

2 SENATOR CRAVEN: I understand what you're saying, but
3 what I'm saying is there's really no exclusivity to that. It
4 happens in many, many places.

5 You must be a veritable terror when you get that gavel
6 in your hand.

7 MR. SIRI: Senator Craven, you know, as you spoke I felt
8 very badly, because I wish that we could come up and help you
9 straighten out that situation.

10 (Laughter.)

11 MR. SIRI: But you know, we're almost powerless.

12 But the situation is not the reverse. You have the
13 opportunity now to correct the situation that we think is bad and
14 that you don't like here in the Capitol. You have that power.

15 SENATOR CRAVEN: No, the people have that power.

16 MR. SIRI: No, in this case you have the power to
17 correct the situation we think is unfortunately wrong.

18 SENATOR CRAVEN: I understand.

19 MR. SIRI: And I wish we could come up and help you
20 correct the situation here.

21 SENATOR CRAVEN: Fine, thank you very much. I
22 appreciate your comment.

23 CHAIRMAN ROBERTI: Just a comment on your observations.

24 That is, I think Senator Craven makes an important
25 point. When we vote on policy confirmations, such as
26 Mr. Dustin's, where he is one of 27 or one of four appointees
27 we're hearing today, I think we have to vote based on a balance
28

1 of not one by one, unless there were some ethical problems
2 involved, which there isn't, but based on whether the
3 appointments are a real attempt to strike some sort of a balance.

4 I would agree that no sizeable majority of any board
5 should be composed of people who are opposed to the very purpose
6 of the board itself. But to have one or two members who are
7 sworn to uphold the law, and we expect that they will do that,
8 who want to narrowly construe that law would only be reflective
9 of the population that they're servicing. People who are
10 negative votes or no votes, or don't like the whole concept of
11 the law also live in the Bay area.

12 Now, I may not agree with them, and I wouldn't. And I
13 think they are, you know, out to lunch as far as their philosophy
14 is concerned. But, they're part of the mixture, and I do not
15 agree that only those people who have not only an adherence to
16 the law, but an affirmative adherence to the law, that they want
17 to see it implemented broadly, should be the ones who sit on the
18 board, because that would not be representative of the entire
19 population.

20 Now, there is somewhere where you have to draw a line,
21 where, if you have a law, and that law has to be implemented,
22 obviously that should be reflected in the opinions of the
23 majority of people who sit on that board. But I do not believe
24 that people who would interpret this law narrowly should be
25 precluded from sitting, as long as they will do the one very
26 minimum but important duty, and that is to uphold the law as they
27 interpret it and not to vote or act contrary to the purpose of
28

1 the law itself. As long as it's narrow construction, they have a
2 place on these boards as well, not a dominant place, and I do not
3 see at this juncture where the appointments, either of the entire
4 27 or of the four we're hearing today, would tilt that
5 composition of the board so as to be composed only of people who
6 are utterly negative to the policy of the BCDC.

7 Now, maybe the next gentleman, or maybe you can convince
8 me otherwise.

9 MR. SIRI: Obviously, Mr. Dustin wants to make a point
10 of balance.

11 One perceives balance, of course, as where you're
12 sitting at the moment. But that balance has been drastically
13 altered now, and that's only part of it.

14 We understand, and we appreciate, and we have been in
15 accord with a balanced Commission, just as in any government
16 exercise.

17 That balance no longer exists. And Mr. Dustin is part
18 of that, of course, the extreme end of it. But that's not the
19 only reason we think he's not suitable for this Commission. For
20 the other reasons as well.

21 MR. MERAL: Mr. Chairman, Members, Gerry Meral,
22 Executive Director of the Planning and Conservation League.

23 It's a rare day when an appointee of the Governor
24 appears before the Rules Committee and says, as I heard him I
25 think, that the basic purpose of the body to which he has been
26 appointed was a mistake and that the status quo should be
27 restored.
28

1 While Mr. Dustin's comments today were very discreet and
2 I think very careful about the idea of giving back to local
3 government the right to control filling San Francisco Bay, I
4 think it's perfectly clear from his statement that that's
5 something he believes in.

6 Now, if that is the case, one might ask: Why do we have
7 a BCDC? The purpose of BCDC was to deal with filling of the Bay,
8 access to the Bay, prevention of destruction of the Bay, because
9 local government wasn't doing the job. That's why the Act was
10 passed.

11 Someone who can come before you and say: We ought to
12 look at infill projects, and if you don't think that the whole
13 Bay front is essentially an infill project you need to tour the
14 Bay, because most of the controversies around the Bay are going
15 to be infill projects in existing cities, many of them anyway.
16 And the question of whether a local master permit should resolve
17 questions of construction along the Bay front, and BCDC should
18 only have a review process, this is an abrogation of the Act.
19 This is basically a refutation of the whole purpose of the Act.
20 Someone who's appointed to BCDC cannot have that view and carry
21 out the law, in our opinion.

22 That is why we support the position of the Save San
23 Francisco Bay Association.

24 CHAIRMAN ROBERTI: Any further witnesses? Yes, please.

25 DR. HERZ: My name is Michael Herz. I'm the Executive
26 Vice President of the Oceanic Society and a Member of the Board
27 of the San Francisco Bay Chapter.
28

1 I echo a number of the things that have been said by
2 Mr. Siri and Mr. Meral. I think the concern is, and Senator
3 Petris I'm sure will correct me if I'm wrong, but the intent of
4 the McAteer-Petris Act was not to stop -- it was to stop the
5 filling of the Bay. And it was set up primarily as an entity, a
6 government body, a regional government entity, if you will, that
7 was designed to protect the Bay from the rapid rate of filling
8 that was then going on.

9 One can, in fact, differ with the intent of the law, but
10 I think it's clear. I think the people that have sat on BCDC
11 over the years have sat there representing many different
12 persuasions, and many different political parties, but they have
13 all agreed to uphold the law. And particularly the things that
14 Mr. Meral just said about Mr. Dustin's intent I think have been
15 clear since the beginning.

16 I was part of a group of three people that went to visit
17 Mr. Dustin and Mr. Tufts, and Mr. Tufts' alternate shortly after
18 they were appointed, or their appointment was announced, and at
19 that time I think Mr. Dustin was somewhat contentious.

20 Now, one of the big concerns, I think, that's been
21 raised that I'd like to reiterate a bit is the notion of conflict
22 of interest.

23 I think historically people who have represented the
24 environmental community who have sat on BCDC have resigned their
25 board memberships, and resigned as officers of organizations that
26 were environmental organizations.

27
28

1 Mr. Dustin has given no indication that he's prepared to
2 do that, and I think anybody that is clearly a member of a
3 development interest group and is an officer or a member of a
4 board of one of those organizations cannot in good conscience sit
5 on BCDC and represent the public interest. And I think that's
6 what the whole issue is about.

7 Thank you.

8 CHAIRMAN ROBERTI: Thank you.

9 Are there any other witnesses? Yes, please come
10 forward.

11 MS. STARKWEATHER: Chairman Roberti and Committee
12 Members, my name is Jean Starkweather. I have a letter of
13 position from the Marin Conservation League signed by Peter Behr,
14 a former colleague of yours.

15 I'm speaking for the Marin Conservation League with 2700
16 members in the Bay Area. We are long time supporters of
17 area-wide planning for San Francisco Bay.

18 Our observers have watched the Bay Conservation and
19 Development Commission for many years and are very concerned with
20 what has been happening during Commission meetings this year.

21 Most of the meetings have been chaired by Vice-Chairman
22 John Dustin, as Chairman Reading was often absent. Mr. Reading
23 has now resigned from BCDC, as you know, and Mr. Dustin has
24 continued to chair the meetings until last month, when Robert
25 Tufts was appointed Chairman. Mr. Dustin continues to serve as
26 Vice-Chairman.

27

28

1 There has been a divisiveness in BCDC discussions this
2 year, both between public and Commission, and between
3 Commissioners, which we have not seen before. Acting Chairman
4 Dustin has limited public testimony and intimidated speakers from
5 the audience, while giving unlimited time to developer
6 representatives.

7 In one case, members of the public had to return three
8 different times in order to speak on a project. And that over
9 four or five months, they had to keep coming back in order to
10 have their turn to speak. Many speakers were unused to public
11 speaking, or to procedures of public hearings and did not make it
12 to the third hearing and, therefore, did not speak at all.

13 In another case, audience members were appalled to hear
14 Acting Chairman Dustin cutting off a fellow BCDC Commissioner's
15 statement in midsentence, in addition, not allowing objection or
16 discussion.

17 We believe that John Dustin should not be Vice-Chairman
18 of BCDC because of his ineptness in running meetings, and because
19 of his disdain of the public. However, we are even more
20 concerned about his stated positions regarding protections of San
21 Francisco Bay. He has stated his opposition to public access
22 requirements. He has stated opposition to requirements for
23 mitigation when a project creates environmental damage. He has
24 even stated that BCDC's permit authority should be returned to
25 local government.

26 Mr. Dustin's opinions are contrary to the McAteer-Petris
27 Act requirements, which set up BCDC with overwhelming public
28

1 support to protect and enhance our great regional resource, San
2 Francisco Bay. We feel Mr. Dustin is not a suitable trustee for
3 this task, and request that you not confirm his appointment.

4 CHAIRMAN ROBERTI: Thank you very much.

5 Any further witnesses?

6 Mr. Dustin, you can answer this for us: How is the
7 Chair and the Vice-Chair selected?

8 MR. DUSTIN: The Governor makes an appointment, Senator,
9 as to all the Commissioners that he has the power to appoint and
10 also specifically as to Chairman and Vice-Chairman.

11 CHAIRMAN ROBERTI: You might respond and maybe touch a
12 little on the gavel because that seems to be something that
13 concerns many of the witnesses.

14 MR. DUSTIN: I will try to be mercifully brief, Senator.
15 I do need the opportunity to rebut some of the misconceptions
16 that have been stipulated here earlier today.

17 Number one, I have said on numerous occasions, in public
18 and private meetings with Commissioners and otherwise, that I'm
19 in favor of the concept of mitigation. I will say so again for
20 the record today.

21 I believe, however, that mitigation needs to be
22 carefully and equitably applied, and needs to be reserved for
23 projects which clearly do provide for environmental damage and
24 not applied in a shotgun fashion on any projects that walks in
25 the door, whether or not environmental damage does accompany it.

26 Number two, I have never as Chairman tried to reduce any
27 mitigation. I have sometimes questioned witnesses who happen to
28

1 be applicants as to how the mitigation was arrived at and whether
2 they were in accord with it. At times, when I've asked the
3 witnesses about that, they have acknowledged in open meeting that
4 they may not be overly happy with the mitigation that was
5 required; they felt they didn't have a lot of say so on how it
6 was arrived at, but they were in accord with it. I think that
7 was probably what Mr. Siri was referring to.

8 Number three, I have never suggested that permit
9 authority be returned to local government. There is a big
10 difference between having a master permit, where the Commission
11 carefully reviews the entire plans for a large area, and
12 returning the permit process to the local governments. There is
13 a very large distinction indeed. It is the difference between
14 approaching projects on a piecemeal one-by-one basis, or on a
15 large stroke basis. And I favor at least the investigation of
16 the latter concept, although absolutely nothing has been done on
17 that so far. I have heard three witnesses totally
18 mischaracterize my position in that respect today in front of
19 you.

20 Number four, as pointed out earlier, this is a large and
21 diverse Commission consisting of 27 members from all over kingdom
22 come. In addition, we often have some very unusual speakers from
23 the public. We have been given a prayer by the Shaman of
24 Richardson Bay and a dance. We have had speakers sometimes utter
25 profanities and engage in other deleterious conduct. At times
26 it's necessary in order to expedite business to make sure that
27 the Commission is directed and is proceeding in a businesslike
28 fashion.

1 There has been one occasion with one Commissioner where
2 she decided she wanted to be Chairman for a minute or two, and I,
3 in order to make sure that the meeting did not progress -- did
4 not get disrupted and did in fact progress, it was necessary for
5 me to impose order at that one time. That is one occasion in one
6 year. This is in a body of 27 individuals.

7 I think it's worthy of note also that the Save San
8 Francisco Bay organization voted to oppose my confirmation before
9 ever having interviewed me. They apparently did that on the
10 basis of press reports and what they had heard. I think that
11 that speaks eloquently for the open mindedness and broad
12 perspective of those individuals. I regret very much that that
13 happened. I found it difficult to believe.

14 My final remark is that I would like to read you a
15 letter that I sent to Governor Deukmejian. It's dated April 6,
16 1984. This is something that I have not made public before
17 today, and it's something I did on my own volition without any
18 assistance or prodding from the Commission. I'd like to read it
19 to you if I may:

20 "Dear Governor Deukmejian:

21 "I write you today with regard
22 to certain elements of your recently
23 announced statewide water policy,
24 including the Cross Delta Canal.

25 "I feel the need to preface
26 my commentary by noting that I am
27 philosophically in accord with
28

1 regional cooperation to the fullest
2 degree feasible. To the extent that
3 a surplus of any commodity, including
4 water, might exist, the social
5 desirability of sharing such a surplus
6 equitably is unquestionable in my view.

7 "However, there is a strong body
8 of evidence indicating that the San
9 Francisco Bay environment has already
10 been damaged by a shortage of fresh
11 water inflow through the Delta,
12 particularly the areas of North Bay
13 siltation, Bay and river fisheries
14 and South Bay flushing action.

15 "It appears likely, therefore,
16 that the days of legitimate surplus
17 are drawing to a close.

18 "Accordingly, I would like to
19 recommend that future water transfer
20 plans contain strong priority
21 guarantees of minimal fresh water
22 inflows for the Bay before additional
23 exports are authorized.

24 "I am sure that we all recognize
25 the futility of trying to improve
26 one area if a detriment of similar
27 consequence is created elsewhere.
28

1 "I am equally sure that you
2 will have these facts in mind as
3 well as the underlying equities
4 of the situation as you reach
5 decisions regarding the statewide
6 water policies."

7 I don't think those are the words of a raper of the
8 land, or somebody who's not concerned with the environment. It's
9 quite possible that I don't share philosophically every tenant of
10 the Save San Francisco Bay organization, but I need to go on
11 record as saying that I fully support a clean and aesthetic Bay
12 environment and a minimization of future fill.

13 Thank you.

14 CHAIRMAN ROBERTI: Thank you, Mr. Dustin.

15 Do I hear a motion?

16 SENATOR CRAVEN: Question, Mr. Chairman. Do you wish to
17 move with two members absent, Mr. Chairman?

18 CHAIRMAN ROBERTI: Yes, and I will put it on call if we
19 need to.

20 SENATOR CRAVEN: Very well. That being the case,
21 Mr. Chairman, I would move the confirmation of Mr. Dustin. I
22 recommend do pass to the Floor.

23 CHAIRMAN ROBERTI: Senator Craven moves that
24 Mr. Dustin's confirmation to the Bay Conservation and Development
25 Commission be recommended to the Floor.

26 On the motion, Senator Petris.
27
28

1 SENATOR PETRIS: Mr. Chairman, I wanted to ask the same
2 question. If we're going to have a full Committee eventually, I
3 think we can go ahead.

4 CHAIRMAN ROBERTI: If need be, if we need their
5 presence, I will have the sergeants come so they can answer a
6 call.

7 SENATOR PETRIS: Otherwise I was going to suggest that
8 we put it over for vote only in fairness to Mr. Dustin.

9 I want to explain my position. I do not plan to vote in
10 support of Mr. Dustin. I listened carefully to the witnesses,
11 some of whom I've known over the years, organizations I've known,
12 who have really been devoted to this mission of the Bay
13 Conservation Commission.

14 I'll make this very brief. I think Senator Craven made
15 some excellent statements to give us the proper perspective. I
16 personally don't have any quarrel with having a developer on
17 BCDC. We've had them before. That's not the issue.

18 The issue is the extent of devotion to the statute. I
19 think that's what Mr. Siri was telling us. You can have a
20 developer on that Commission whose votes in favor of projects are
21 going to be higher in percentage than my votes in favor of
22 projects. But they're a matter of degree within the confines of
23 the statute.

24 I think the perception they have is there seems to be a
25 very strong feeling by Mr. Dustin of opposition to the concept in
26 a couple of areas. Rightly or wrongly, that's their impression
27 based upon going to all the meetings and so forth.
28

1 That's a different question, and that's what troubles
2 me. The possible push for return to local government would
3 really dismantle it, as I indicated my nervousness about it, and
4 the other two issues of access and mitigation. If you're really
5 opposed to those concepts, you can't very well serve. If your
6 degree of difference is, well, we really don't have enough
7 balance, I don't have any quarrel with your statement about
8 enough balance. If you feel there should be more balance, and
9 within the concept of the statute you vote for more projects than
10 some other member, there's nothing wrong with that.

11 So, if we're going to have the members come back, we can
12 go ahead with the vote. If not, out of fairness to Mr. Dustin
13 I'd recommend it go over.

14 CHAIRMAN ROBERTI: I think they're coming back.

15 Senator Craven's motion is before us.

16 Yes, you wanted to make one more comment?

17 MS. EDGER: Elva Edger.

18 As far as I can recollect, these appointees have voted
19 with the law each time, whether reluctantly or happily.

20 CHAIRMAN ROBERTI: Thank you, Ms. Edger.

21 The Secretary will call the roll.

22 SECRETARY WEBB: Senator Craven.

23 SENATOR CRAVEN: Aye.

24 SECRETARY WEBB: Senator Mello. Senator Petris.

25 SENATOR PETRIS: No.

26 SECRETARY WEBB: Senator Johnson. Senator Roberti.

27 CHAIRMAN ROBERTI: Aye.
28

1 Senator Craven moves that a call be placed. Without
2 objection such will be the order. We have a sergeant calling
3 Senators Mello and Johnson.

4 Thank you, Mr. Dustin.

5 The next is Mr. Angelo John Siracusa, Member of the San
6 Francisco Bay Conservation and Development Commission.

7 Mr. Siracusa, please tell us why you feel you're
8 qualified to assume this position.

9 MR. SIRACUSA: I'm Angelo Siracusa. I'm President of
10 the Bay Area Council, which is an organization involved in Bay
11 area-wide public policy issues. The Council was an early
12 endorser of the 1965 legislation that created BCDC.

13 I am personally an enthusiastic endorser of the mission.
14 I believe that the statute is an outstanding piece of work as is
15 the Bay plan. I think that the traditions of the Commission are
16 quite positive, and unlike the previous comments made, I do not
17 see any changes in the directions of that Commission as the
18 result of new appointments.

19 I believe that the people who are on the Commission, and
20 I speak wholeheartedly for myself, believe very strongly in the
21 spirit and the letter of the law to preserve the Bay, not only as
22 an environmental but as an economic resource, and that the
23 statute and the plan demonstrate the appropriate uses and
24 tradeoffs that are to be made. I believe very strongly that we
25 have a strong constituency for that preservation, and I adhere to
26 it very strongly.

27
28

1 I personally am very deeply involved in public policy
2 analysis and have followed BCDC from its inception, and therefore
3 I believe that I am qualified to serve as a Commissioner,
4 understanding the history of the law and the works and the
5 tradition of the Commission. I believe I would be an excellent
6 Commissioner.

7 I have been typified as being pro-development, which I
8 am. In so doing, I believe that I am thoughtful with respect to
9 development and recognize that there are certain parcels of real
10 estate that are appropriate for development and some that are
11 not. In the case of San Francisco Bay, if you wish to view it
12 that way, it is not appropriate for development there. There
13 would need to be a very strong burden of proof to anybody coming
14 before the Commission that development is appropriate in the Bay.

15 CHAIRMAN ROBERTI: Thank you, Mr. Siracusa.

16 Are there any witnesses in support or opposition? Any
17 questions?

18 You're getting off easy.

19 Senator Craven moves.

20 SENATOR CRAVEN: Very well.

21 CHAIRMAN ROBERTI: Secretary will call the roll.

22 SECRETARY WEBB: Senator Craven.

23 SENATOR CRAVEN: Aye.

24 SECRETARY WEBB: Senator Mello. Senator Petris.

25 SENATOR PETRIS: Aye.

26 SECRETARY WEBB: Senator Johnson. Senator Roberti.

27 CHAIRMAN ROBERTI: Aye.
28

1 The vote is three to nothing, confirmation recommended
2 to the Floor.

3 Congratulations.

4 MR. SIRACUSA: Thank you.

5 CHAIRMAN ROBERTI: Next is Mr. Robert R. Tufts, Member
6 and Chairman of the San Francisco Bay Conservation and
7 Development Commission.

8 Mr. Tufts, please tell us why you feel you are qualified
9 to assume this position.

10 MR. TUFTS: Senator, I certainly support the main thrust
11 and the purposes of the McAteer-Petris Act, and within the
12 parameters of discretionary judgment permitted by the
13 Commissioners under the Act, I think I would seek to apply it
14 fairly, and have applied it fairly in the past, taking into
15 consideration the valid policies of conservation and balancing
16 them against the orderly development permitted under the Act.

17 CHAIRMAN ROBERTI: Thank you, Mr. Tufts.

18 Any questions of Mr. Tufts?

19 Let me ask you a question I asked Mr. Dustin. Do you
20 think there are ways in which the Governor's proposal on water
21 transferal, as it affects San Francisco Bay, ought to be changed?

22 MR. TUFTS: Well, generally I think I'm opposed to the
23 proposal as it stands now. But I really need a lot more
24 information to be fair about what's going on to make a valid
25 judgment.

26 CHAIRMAN ROBERTI: You don't have any recommendations?

27 MR. TUFTS: No, not at this stage.

28

1 CHAIRMAN ROBERTI: But you're generally opposed?

2 MR. TUFTS: Yes.

3 CHAIRMAN ROBERTI: Any other questions? Anyone
4 testifying in support? Please come briefly.

5 MR. SIRI: The name is still William Siri.

6 I thought, Senator Craven, that I ought to show you that
7 I do have an unbiased position on appointees, even those made by
8 the good Governor. I'll make my statement very brief this time.

9 It's to this effect, that we are reassured by the
10 appointment of Mr. Tufts as the Chairman of BCDC. His
11 performance to date has been objective, balanced, informed and
12 professional. And he also he has regularly attended meetings.

13 We would support his appointment to BCDC. He's given
14 every indication that he's going to be a good Chairman and a
15 balanced one.

16 CHAIRMAN ROBERTI: Thank you very much.

17 Next.

18 MS. SALZMAN: My name is Barbara Salzman. I'm here
19 representing the Marin Audubon Society, which is a local chapter
20 of the National Audubon Society, and we have about 3,000 members.

21 Briefly, we've been concerned, as many other groups have
22 been since the appointment of the five new members. We'd like
23 briefly to say that we've found Mr. Tufts to be a fair and
24 competent Commissioner, and we haven't been present when he's
25 been leading a meeting, but if he continues in the pattern he's
26 shown so far on the Commission, we think he'd be a very
27 responsible Chairman.
28

1 CHAIRMAN ROBERTI: Thank you very much.

2 Any discussion or debate?

3 Senator Craven, I believe, has a motion.

4 SENATOR CRAVEN: I would move confirmation of Mr. Tufts.

5 CHAIRMAN ROBERTI: Senator Craven moves that Mr. Tufts'
6 confirmation be recommended to the Floor.

7 Is there any opposition?

8 The Secretary will call the roll.

9 SECRETARY WEBB: Senator Craven.

10 SENATOR CRAVEN: Aye.

11 SECRETARY WEBB: Senator Mello. Senator Petris.

12 SENATOR PETRIS. Aye.

13 SECRETARY WEBB: Senator Johnson.

14 SENATOR JOHNSON: Aye.

15 SECRETARY WEBB: Senator Roberti.

16 CHAIRMAN ROBERTI: Aye.

17 The vote is four to nothing; confirmation is recommended
18 to the Floor.

19 Senator Craven moves that the call be lifted in regard
20 to the appointment of Mr. John Dustin to the Bay Conservation and
21 Development Commission.

22 Secretary will call the absentees.

23 SECRETARY WEBB: Senator Mello. Senator Johnson.

24 SENATOR JOHNSON: Aye.

25 CHAIRMAN ROBERTI: The vote is three to one;
26 confirmation is recommended to the Floor.

27 We are now in Executive Session.

1 (Thereupon this portion of
2 the Senate Rules Committee
3 meeting was terminated at
4 approximately 4:00.)

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

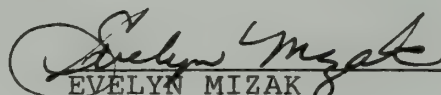
That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

25th

day of June, 1984.


EVELYN MIZAK
Shorthand Reporter

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no. 6

HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 27, 1984
1:30 P.M.

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1 HEARING
2 SENATE RULES COMMITTEE
3 STATE OF CALIFORNIA
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10 STATE CAPITOL
11 ROOM 113
12 SACRAMENTO, CALIFORNIA
13
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15

16 WEDNESDAY, JUNE 27, 1984
17 1:30 P.M.
18
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23
24

25 Reported by:

26 Evelyn Mizak
27 Shorthand Reporter
28

MEMBERS PRESENT

Senator David Roberti, Chairman
Senator Ray Johnson, Vice-Chairman
Senator William Craven
Senator Nicholas Petris
Senator Henry Mello

MEMBERS ABSENT

None

STAFF PRESENT

Cliff Berg, Executive Officer
Pat Webb, Committee Secretary
Rick Rollens, Consultant
Nancy Michel, Consultant
Bruce Samuel, Assistant to Senate Rules Committee

GOVERNOR'S APPOINTEES REQUIRED TO APPEAR

DALE RIDE, Member,
Trustees of the California State University
TOM C. STICKEL, Member,
Trustees of the California State University
W. GLENN CAMPBELL, Member,
The Regents of the University of California
FRANK L. HOPE, JR., Member,
The Regents of the University of California
DEAN ALLEN WATKINS, Member,
The Regents of the University of California
ANDREW WORTMAN, Ph.D., Member,
State Air Resources Board

ALSO PRESENT

CATHY CAMPBELL, Member,
Student Body Presidents' Council
University of California

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Witness in Opposition:
CATHY CAMPBELL

Committee Action
Final Action

ANDREW WORTMAN, Ph.D., Member
State Air Resources Board

Questions
Motion
Committee Action

Appointees Not Required to Appear:

BEN NOBLE, Member
Commission on Judicial Performance

CARMEN J. GRANDE, Member
Commission on Peace Officer Standards and Training

CHARLES B. USSERY, Member
Commission on Peace Officer Standards and Training

Motion
Committee Action

Adjournment

Certificate of Reporter

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Governor's Appointments, Mr. Dale Ride, Member of the Trustees of the California State University.

Mr. Ride, we'll ask you what we ask all the Governor's Appointees, why you feel you are qualified to assume this term of office as a Member of the Board of Trustees for the California State University.

MR. RIDE: I've been associated with education for about 30 years, higher education for about 25-26 years, have a real concern about education and the welfare of the State. I think this is the qualification.

CHAIRMAN ROBERTI: Very good, thank you. We're happy to have you with us. I recollect well our last experience.

MR. RIDE: I had an experience yesterday at Canaveral, when our son-in-law did not get up.

CHAIRMAN ROBERTI: Yes, absolutely. Congratulations as being --

MR. RIDE: Alive.

CHAIRMAN ROBERTI: I know.

Senator Craven, you have an observation.

SENATOR CRAVEN: Were you at Haverford when Mr. Morley was there?

MR. RIDE: Yes, I was, as a matter of fact.

SENATOR CRAVEN: I may be the only fellow in Sacramento that knows even where Haverford College is.

MR. RIDE: It's a great place.

1 SENATOR CRAVEN: Yes, it is, very delightful. I used to
2 pass it every day.

3 CHAIRMAN ROBERTI: Any opposition, and there better not
4 be any.

5 Then Senator Craven moves --

6 SENATOR PETRIS: Question.

7 CHAIRMAN ROBERTI: Senator Petris has a question.

8 SENATOR PETRIS: Just on one subject, student fees.
9 Tell me what your long-range view is on shifting more and more of
10 the cost of education to the students over the long-haul?

11 MR. RIDE: I think that the compromise which was arrived
12 at was a reasonable one because at least in our situation the
13 students are paying probably on the average a lower fee now than
14 they paid with no limitation on it. I think that the State has a
15 responsibility to provide education for all of its citizens. I
16 think that probably the individual citizen student has some
17 obligation as long as there's adequate financial aid for those
18 who cannot afford it.

19 I certainly would never want to see the fees raised
20 markedly, because I think it would preclude students from
21 enrolling. So, I think that the compromise certainly was
22 reasonable that was arrived at by the Senate and by the Assembly
23 and signed by the Governor.

24 SENATOR PETRIS: Apart from that particular solution,
25 what is your policy overall, let's say, five years from now,
26 given some options: raising student fees; lowering them; or
27 having the public foot the bill for whatever difference is
28

1 needed. In which direction generally would you like to see us
2 go, or would like the Board that you're on go?

3 MR. RIDE: I think basically that the responsibility for
4 providing public education is the tax payer. And I think the tax
5 payer is not only the so-called adults, but also the students
6 within the system who do pay taxes.

7 So, I think that in the long-run it's the responsibility
8 for the tax payer to provide the education for its citizens. At
9 the same time I do feel that the individual user, the student,
10 has some responsibility, but it's a very minimal responsibility.

11 SENATOR PETRIS: That's really been our system for a
12 hundred years or more, hasn't it. It's worked pretty well;
13 hasn't it?

14 MR. RIDE: I went through it, so I think you have some
15 bad products.

16 SENATOR PETRIS: Sometimes I have a feeling that your
17 generation and mine that got through on very little or no fees is
18 now pulling up the rope ladder into the helicopter, and we want
19 all those others in the lifeboat to pay their own way more and
20 more.

21 I'm pleased to hear your response.

22 MR. RIDE: Thank you.

23 CHAIRMAN ROBERTI: Senator Craven has moved. The
24 Secretary will call the roll.

25 SECRETARY WEBB : Senator Craven.

26 SENATOR CRAVEN: Aye.

27 SECRETARY WEBB : Senator Mello. Senator Petris.

28

1 SENATOR PETRIS: Aye.

2 SECRETARY WEBB : Senator Johnson.

3 SENATOR JOHNSON: Aye.

4 SECRETARY WEBB : Senator Roberti.

5 CHAIRMAN ROBERTI: Aye.

6 The vote's four to nothing, confirmation recommended to
7 the Floor.

8 Congratulations.

9 MR. RIDE: Thank you.

10 CHAIRMAN ROBERTI: The next is Mr. Tom C. Stickel,
11 Member of the Trustees of the California State University.

12 Mr. Stickel, we'll ask you the same question, why you
13 feel you're qualified to assume this term of office?

14 MR. STICKEL: Well, as a graduate of the State
15 University system, I am obviously deeply concerned about it and a
16 great interest in it. I've been active on a local basis with San
17 Diego State University, both as an active alumni and as one who
18 is concerned with all aspects of the University's
19 interrelationship with the community, and therefore this is a
20 position that I'm excited to bring whatever skills I may to it
21 and with enthusiasm, some idealism, and some background in the
22 system itself. I think collectively that is the experience and
23 talents I bring to this position.

24 CHAIRMAN ROBERTI: Thank you, Mr. Stickel.

25 Any questions of Mr. Stickel?

26 SENATOR CRAVEN: Move Mr. Stickel.
27
28

1 CHAIRMAN ROBERTI: Senator Craven moves Mr. Stickel's
2 confirmation.

3 SENATOR JOHNSON: How is your knee now? You were an
4 outstanding football star and then you got your knee banged up,
5 and that put an end to that, I guess.

6 MR. STICKEL: I wasn't outstanding, and therefore my
7 knee luckily saved whatever else of my body.

8 (Laughter.)

9 CHAIRMAN ROBERTI: Senator Craven's motion is before us.
10 Is there any opposition? Seeing none, the Secretary will call
11 the roll.

12 SECRETARY WEBB : Senator Craven.

13 SENATOR CRAVEN: Aye.

14 SECRETARY WEBB : Senator Mello. Senator Petris.

15 SENATOR PETRIS: Aye.

16 SECRETARY WEBB : Senator Johnson.

17 SENATOR JOHNSON: Aye.

18 SECRETARY WEBB : Senator Roberti.

19 CHAIRMAN ROBERTI: Aye.

20 The vote's four to nothing, confirmation recommended to
21 the Floor.

22 Congratulations.

23 MR. STICKEL: Thank you.

24 CHAIRMAN ROBERTI: The next set of appointments will be
25 Members of the Board of Regents of the University of California,
26 Mr. W. Glenn Campbell.

27 Good to have you with us.
28

1 MR. CAMPBELL: Thank you, Mr. Chairman.

2 CHAIRMAN ROBERTI: We will ask you the same question,
3 and I guess we'll phrase it why you feel you are qualified to
4 retain your position on the Board of Regents.

5 MR. CAMPBELL: Well, I've served for 16 years, Mr.
6 Chairman. I think I've served the University and the people of
7 the State of California ably and, I hope, with some distinction.

8 I should add that, as you may know, practically the
9 whole of my life, except for a few years in private business so I
10 could learn what the real world was like, has been spent in the
11 field of higher education. Because of that, I think I bring
12 particular qualifications to the post.

13 CHAIRMAN ROBERTI: Thank you, Mr. Campbell.

14 Are there any questions.

15 SENATOR CRAVEN: Yes, I have a question.

16 Would you tell me, Doctor, what the Philadelphia Society
17 is?

18 MR. CAMPBELL: Yes, it was a Society that held its first
19 meeting in Philadelphia, and basically it's a Society that
20 believes in much the same concepts of government as our fathers
21 did, founders did.

22 SENATOR CRAVEN: Based on colonial precepts?

23 MR. CAMPBELL: Right.

24 SENATOR CRAVEN: Well, the only reason I asked that, of
25 course, is because I'm a Philadelphian, and I had not heard of
26 it. Now I'm much more informed, and that's why it's of course
27 indeed a pleasure to recommend your nomination.
28

1 CHAIRMAN ROBERTI: Senator Craven moves Mr. Campbell's
2 confirmation do pass and to the Floor.

3 Is there any opposition?

4 You want to address the nomination, I take it?

5 MS. CAMPBELL: Yes.

6 Mr. Chairman and Members of the Committee, my name is
7 Cathy Campbell, and I'm here today representing the Student Body
8 Presidents' Council and the 141,000 students currently enrolled
9 at the University of California.

10 I'm here to express our opposition to the three persons
11 appointed by the Governor to serve on the U.C. Board of Regents,
12 W. Glenn Campbell in particular at this time, as well as Mr. Dean
13 Allen Watkins and Mr. Frank L. Hope.

14 I am also appearing before you today as a member of the
15 Advisory Committee that was established to counsel the Governor
16 on the selection of these three appointments.

17 We oppose these three appointments to the U.C. Board of
18 Regents for two reasons. First, the present composition of the
19 Board does not reflect the economic, social, cultural, and ethnic
20 diversity of our State, and the appointment of these three
21 gentlemen, two of which are up for reappointment, will only
22 ensure that the present imbalance continues for many more years.

23 Currently only 4 of the 28 Regents belong to minority
24 groups: 2 Blacks, 1 Asian, and 1 Hispanic. And only two of the
25 members are women.

26 With the minority community of our State comprising well
27 over one-third of our population, we would expect greater
28

1 representation on the Board than the current 14 percent. And, as
2 I do not have to remind you, the minority members of our State
3 will in the near future, if current demographic trends continue,
4 comprise the majority of our State.

5 In addition, women comprise 50 percent of our
6 population, and therefore should constitute more than the current
7 7 percent of their membership on the Board of Regents.

8 The second reason we are opposing these three
9 appointments is because of the process by which the three
10 individuals were appointed. We believe that the process violates
11 the State Constitution, which requires the Governor to consult
12 with an advisory committee. As a member of that Advisory
13 Committee, I can assure you that no consultation took place. The
14 only communication that the Governor had with us was a letter in
15 which he identified his three appointments.

16 Further, the committee never met, and therefore never
17 had the opportunity to develop criteria or to develop and review
18 a list of possible candidates.

19 Had the Advisory Committee been appropriately utilized
20 or consulted, as is required by the Constitution, then possibly
21 the Governor would have realized the need to increase the number
22 of minorities and women on the U.C. Board of Regents, and we
23 would not have been placed in the position of appearing before
24 you today to state our opposition.

25 It is our hope that the Senate Rules Committee will
26 recommend that prior to future appointments to the U.C. Board of
27 Regents, the Advisory Committee develop a list of criteria and a
28

1 list of candidates to forward to the Governor. We believe that
2 such action would comply with the State's Constitution and ensure
3 that future appointments better reflect the diversity of our
4 State's population.

5 Also, although we are not recommending it at this time
6 specific formulas or ratios be applied to the selection process,
7 we do feel that the adequate representation of minorities and
8 women should be a major consideration in choosing members of the
9 Board of Regents.

10 This year is the 20th anniversary of the passage of the
11 Civil Rights Act of 1964, and as the statistics painfully show,
12 the University of California has demonstrated neither the will
13 nor the ability to meet its legal and moral obligations in
14 conforming with either the intent or the spirit of the law with
15 respect to addressing the rights and needs of those who have been
16 historically underrepresented, minorities and women.

17 It is the position of the U.C. Student Body Presidents'
18 Council and the Associated Students of the University of
19 California that if these individuals, as well-qualified as they
20 may be, are confirmed, this will send a clear message to the
21 citizens of our State that the Governor and the Legislature is
22 turning its back on those members of the State's population who
23 have historically suffered discrimination.

24 I'd like to thank you for your time and consideration,
25 and if I could have the leave of the Committee, I have a number
26 of questions for Mr. Campbell.

27
28

1 CHAIRMAN ROBERTI: You can ask the questions through the
2 Chair.

3 MS. CAMPBELL: All right. So, you'd like to postpone
4 that at this time?

5 SENATOR CRAVEN: No, it means that you should direct
6 your questions to Senator Roberti.

7 CHAIRMAN ROBERTI: You should ask me in such a way, and
8 I will try to see if I can obtain the information.

9 MS. CAMPBELL: Mr. Chair, could you ascertain whether
10 Mr. Campbell has plans or has a sense of what he sees as specific
11 contributions that he has made towards improving the University's
12 affirmative action record during the time that he has been a
13 Regent, which constitutes about 16 years at this point?

14 CHAIRMAN ROBERTI: I will ask a question along those
15 lines. I would like to make an observation on how I intend to
16 vote on Mr. Campbell's confirmation, and I intend to regard
17 future confirmations.

18 Mr. Campbell, as you indicated also, is very well-
19 qualified to retain this position. I intend to vote that he does
20 retain this position.

21 However, I don't intend that to be a clear message that
22 future appointments, as least as far as my own vote is concerned,
23 are to be made without, one, consultation of the advisory
24 committees and all those which the Constitution requires that
25 there be advice as far as the appointments. I dare say that even
26 the Senate is to engage in advice and consent. And I understand
27 your frustration because we have only been on the consent end for
28 some time as far as some of these appointments are concerned.

1 Equally important, I was amazed because I didn't realize
2 that the disparity was so great on the Board of Regents, but
3 there are only four minority members out of 28, which is
4 incredible in this day and age to have that kind of disparity so
5 topsy. Of those four minority, two are women, so the two women
6 and four minorities; the two women happen to be, I believe Mrs.
7 Burke, a Black woman, and Mrs. Martinez, a Mexican-American
8 woman. So therefore, we're only talking about four people who
9 are not white males or white males who are senior.

10 Now, I'm not saying this in such a way that I'm
11 castigating Governor Deukmejian, because this has been a
12 tradition of the University of long standing, and who or what is
13 responsible, who knows. I think everyone is responsible for the
14 situation becoming so disproportionate as far as membership is
15 concerned. And that is also entering into my mind as to why I'm
16 voting for these three.

17 I just do not think it would be proper, as soon as
18 Governor Deukmejian makes an appointment, that we suddenly raise
19 the banner, as important as the banner is, and say that we must
20 adhere to standards that do not seem to have been part of the
21 calculation earlier.

22 The other point which I think I feel strongly about is,
23 I think the Board should be also reflective of a diversity of
24 people as far as profession and income. I think if the same
25 survey were made, we would find that unlike the Legislature,
26 which is relatively diverse as far as profession and income, with
27 maybe a slight tilt towards lawyers, that the Board of Regents is
28 not.

1 I'm not saying this to bawl Mr. Campbell out. He's no
2 more responsible than Senator Roberti, or whomever, as to why
3 this situation on the Board itself has come about. Whatever, it
4 is something that I would counsel the Rules Committee is going to
5 have to take into consideration in future appointments.

6 I think the Governor has been notified as to our
7 concern, and I don't mean to imply that he doesn't share the
8 concern. It's something that all of us working together have to
9 take into consideration on future appointments or reappointments.

10 And the part of the advice of the Advisory Committee I
11 think is important. It's a constitutional step that must be
12 taken. I grant the language isn't tied down, as most advisory
13 language is not tied down. But that step has to be taken.

14 Having said my speech, and I mean it very, very
15 seriously on future appointments on all these boards, including
16 the Board of Trustees as well, I will ask Mr. Campbell: What do
17 you feel your record has been as far as affirmative action?

18 MR. CAMPBELL: Yes, Senator Roberti.

19 Let me first just comment briefly on your very pertinent
20 comments.

21 The only reason -- I was born and raised on a farm. I'm
22 a foreigner, as a matter of fact, from Canada. The only reason
23 why I'm relatively affluent is because I have a distinguished
24 spouse who's a Hispanic who makes a lot of money, or makes a good
25 living.

26 I think I give some diversity because I'm academic in
27 background. I'm neither a lawyer nor a businessman, if I may
28 mention that.

1 Now as to the affirmative action question --

2 CHAIRMAN ROBERTI: I don't have anything against anyone
3 of some wealth, whether directly or via his spouse serving.

4 My point is that there should be some diversity, and I
5 certainly don't want to single you out.

6 MR. CAMPBELL: I thought maybe I'd get half a point for
7 the fact that my wife is Hispanic.

8 (Laughter.)

9 MR. CAMPBELL: Now in respect to affirmative action, I
10 have always supported all the affirmative action programs at the
11 University of California. One of the first votes right after I
12 went on the Board of Regents was to vote raising so-called
13 exception percentage from two percent to four percent. That was
14 for people on 12½ percent, the top 12½ percent of high school
15 graduates. They may not have been in it, but their record and
16 promise was such that it was special courses. They could do work
17 at the University of California level, and they could graduate.

18 I also supported the use, and to some people this may be
19 controversial, but I think it was one of the -- turned out to be
20 one of the more important assistances to minorities and
21 affirmative action in the early '70s, in the mid-'70s, the use of
22 the education fee funds really exclusively for student aid.

23 I could go on, but I hope that I've made sufficient
24 points so that my role of all Campbells are related, sooner or
25 later, but as you can see, we are very independent-minded.

26 CHAIRMAN ROBERTI: Very good.
27
28

1 SENATOR JOHNSON: Mr. Chairman, I have a question of the
2 witness, if I may.

3 MS. CAMPBELL: Certainly.

4 SENATOR JOHNSON: Do you classify women a minority?

5 MS. CAMPBELL: I think that the terms are used
6 separately just in an effort to provide clarity and in an effort
7 to demonstrate that often the issue is ethnic minorities and
8 their underrepresentedness in various sectors that has a much
9 more different historical tradition than that that women have
10 experienced.

11 SENATOR JOHNSON: The reason I asked you that question,
12 I can understand Blacks with a percentage of men and women that
13 are Black, and the Hispanics with a certain percentage. They are
14 true minorities.

15 But if I know anything about California, I think the
16 women are in the majority here; are they not?

17 MS. CAMPBELL: They certainly are.

18 SENATOR JOHNSON: They can vote every one of us turkeys
19 out of here anytime they wanted.

20 MS. CAMPBELL: But, sir, the issue is that the Governor
21 has the power to appoint people to the Regents, and the statement
22 that we're making is, if they constitute 50 percent of the
23 population, they should constitute 50 percent or some more
24 equitable --

25 CHAIRMAN ROBERTI: I think she uses the term as many
26 others use the term in the sense that women are not a minority in
27 the population, but they are a minority in terms of
28

1 representation in important positions. So I think in that sense,
2 yes, they are a minority.

3 SENATOR JOHNSON: But I would want to point out to you
4 women -- and I'm sure you're going to do it; you're moving pretty
5 fast -- that you are going to be in the majority on everything.
6 And when that day comes, I'm going to be fishing because I want
7 you to do the work, and that's fine, because it's coming about
8 and there's nothing wrong with it. Women are capable and able,
9 and if they want to do it, it's the way it's going to work out.

10 But you really do have the voting power to do pretty
11 near anything you want. You can elect a Governor that'll put all
12 Regents the way you want it, if you so desire. Whereas the
13 Black, the true minorities, can't do that, but you could.

14 So, I think you ought to get out from under the umbrella
15 of minority. I think you're getting a little broad. You ought
16 to use the minorities and women.

17 MS. CAMPBELL: That was the language that I intended to
18 use, and I'm sorry if I --

19 SENATOR JOHNSON: I think that would be better language,
20 then we'd understand it better.

21 MS. CAMPBELL: Certainly that was my intention.

22 SENATOR JOHNSON: Okay, all right.

23 And one other thing I'd like to point out to you.
24 Sometimes you look at a man that's been successful, or a woman,
25 and you say: well, that's somebody that doesn't understand the
26 problem.

27

28

1 If you look in the history of most people that have been
2 real successful, they usually are those that started out with
3 nothing, and they climbed, they scrounged, they have a better
4 understanding of really what it's like to be poor, and what it is
5 to really get in and dig than a lot of these dudes that come down
6 from wealthy families who probably never wind up as being very
7 successful in their own right. So, sometimes we look at somebody
8 and we think: Geez, that guy really made it. You've just got to
9 hand it to him. But those people have a tremendous amount of
10 experience to draw upon, and usually they're men that have a
11 great understanding, and women. We've had some here that have
12 been very successful women, and sometimes because they've been so
13 very successful, it's almost something against them.

14 So, you want to get the top brains you can get, whether
15 they're men, women, or Black or White, to help run these schools,
16 because it's a tremendous responsibility.

17 I just want to point that out to you, that just because
18 a person's been successful and is up here now, don't look at him
19 and say --

20 MS. CAMPBELL: We're not directly criticizing any of the
21 individuals that are before you today. We're raising the issue
22 of representation.

23 SENATOR JOHNSON: I have no problem.

24 MS. CAMPBELL: I have one further question.

25 Could the Chair ascertain for me, similar to the
26 question that Senator Petris asked, Mr. Campbell's feelings on
27 the long-range issue of the State's commitment to tuition-free
28

1 education and the fee policies here in the State, particularly
2 given his strong advocacy in the past of tuition for U.C.
3 students?

4 CHAIRMAN ROBERTI: Yes, it would be very interesting for
5 us to know your position on tuition, fees, and what your policies
6 have been in the past, and have they been modified?

7 MR. CAMPBELL: Mr. Chairman, I'd be delighted to explain
8 that.

9 First, let me say that I'm sorry that someone has
10 mislead Miss or Ms. Campbell, whichever you prefer, that I favor
11 tuition for University of California students.

12 To the best of my knowledge, I have never proposed
13 tuition for undergraduates at the University of California. As a
14 matter of fact, I've even made speeches at the Regents meetings
15 saying, particularly for freshmen and sophomores, I think
16 personally the fees are too high.

17 Today is really not the time to discuss philosophies of
18 sliding scale fees, and whether people in professional schools,
19 whether they be dentists, doctors, veterinarians, Graduate School
20 of Business people, and if I may mention that other word, Mr.
21 Chairman, lawyers. I believe, as a matter of fact, a year or two
22 ago, the State Legislature did ask us to come up with a tuition
23 plan for professional schools. For various reasons we never did
24 it at the University of California.

25 I think when you relate it to the cost of education, and
26 that's the reason why I've made speeches saying that we're
27 probably overcharging the freshmen and sophomores because the
28

1 cost of the education for them, to take an extreme example, is
2 much, much lower than the cost of the education of M.D.s, but if
3 we were ever to have sliding fees, or to have tuition, it could
4 only, only be if we had very generous fee deferral schemes and
5 student aid schemes.

6 Now, this is purely a matter of opinion. I personally
7 happen to believe that a system like that, in which you had very
8 generous fee deferral and aid schemes, would probably encourage
9 more minorities, and if I may mention the other term, more women,
10 Senator Johnson, although the women seem to be doing very well on
11 their own. I think well over 30 percent in our law schools now
12 and rising. Probably would encourage more minorities rather than
13 less minorities.

14 I'm sorry to take so long in this answer, but my
15 position has been misrepresented so many times, I want this
16 Committee to understand it. But I am not recommending tuition
17 for the University of California.

18 CHAIRMAN ROBERTI: Thank you. I think we understand.
19 It's good to hear it.

20 MS. CAMPBELL: Mr. Chairman, these are all the questions
21 I have to recommend to you for Mr. Campbell. As a member of the
22 Advisory Committee, I have a number of questions to recommend to
23 you for the other appointees. How best would you like --

24 CHAIRMAN ROBERTI: One at a time. When the next
25 appointment comes up, I would suggest that you come up also.

26 SENATOR CRAVEN: I'd just like to ask a question of
27 Ms. Campbell.
28

1 Your position is on the Advisory Committee; is that the
2 correct title?

3 MS. CAMPBELL: Yes, the State Constitution calls for an
4 advisory committee to be established.

5 SENATOR CRAVEN: How many people on that?

6 MS. CAMPBELL: It's difficult for me to answer that
7 question, Senator Craven, because as a member of the Committee,
8 we were never informed of other members of the Committee.

9 SENATOR CRAVEN: Does the Advisory Committee meet as a
10 whole from time to time?

11 MS. CAMPBELL: In this particular instance, it did not.

12 SENATOR CRAVEN: I remember your saying that, but in
13 your recollection prior to that time, did they meet as a group?

14 MS. CAMPBELL: No.

15 SENATOR CRAVEN: Is it intended that they do so?

16 MS. CAMPBELL: I'm not sure that I'm in a position to be
17 able to answer that question. It's my recommendation that in the
18 future, when appointments such as these are being made --

19 SENATOR CRAVEN: You think it would be a good idea, I
20 understand.

21 I just wondered whether -- this may be a play on words
22 -- I'm just wondering whether the Advisory Committee is a
23 committee that is existent to be advised by the Governor of what
24 he has chosen to do. I kind of get that impression, because if
25 they were meeting sort of in tandem with the Regents, or
26 quarterly, or whatever, you know, as a group, I would see that
27 they were performing a specific function. I would presume it
28

1 puts you in a position wherein you have a certain entree to the
2 Regents by virtue of your Committee assignment so that you would
3 be listened to as a voice of the public.

4 Basically isn't that the way you look at your roll?

5 MS. CAMPBELL: Well, I think that the problem, Senator
6 Craven, is that when you're given this entree or this position of
7 influence after decisions have been made, you can't really
8 adequately represent the interests of the population of the
9 State. So, I don't see that as being what was intended by the
10 Constitution, or what would be best for the people of the State
11 of California.

12 SENATOR CRAVEN: Is your group, which total you really
13 are not aware of, you know other members of the Advisory
14 Committee; do you not?

15 MS. CAMPBELL: I heard some vague mentions of other
16 possibilities, but actually I do not know of them because we were
17 never given any information.

18 SENATOR CRAVEN: You see, I understand what you're
19 serving on; I think I have a concept of that. But I get the
20 impression that it's a rather ethereal group, kind of hard to get
21 your hand on, because they may not be found in Room 605 on the
22 Berkeley campus on the fourth Tuesday of every month.

23 I was going to ask you, are they a sort of a
24 heterogeneous group, but you're really not in a position to
25 answer, are you?

26 MS. CAMPBELL: I think that maybe the point of this line
27 of questioning, Senator Craven, that we can draw from it is that
28

1 while in this instance that kind of concreteness and real genuine
2 ability to consider things and make decisions was not utilized,
3 it certainly is possible in the future that this group could
4 convene and could do some work that would really serve to bring
5 forth the best possible nominees for the Board of Regents.

6 SENATOR CRAVEN: I would say this, simply that your
7 statistics are irrefutable. There's no questions about that;
8 those are absolutely correct. And I think philosophically you
9 have a very good point. I don't disagree with that either.

10 However, I think that the Governor enjoys a certain
11 prerogative to make these appointments, and that he has to either
12 rise or fall by the indictment of the people as to what he has
13 done. I think it's very hard to, in effect by virtue of your
14 role, to make him conform to a particular action, albeit a very
15 good thought. But I have a little trouble. To me, the whole
16 thing is kind of tenuous.

17 Would you agree?

18 MS. CAMPBELL: I would agree that at the moment it is.
19 I also feel, however, that if this Committee and the Members of
20 this Committee were to take a serious role and make a serious
21 commitment to changing the vision of what an advisory committee
22 should do, that something could definitely be changed.

23 SENATOR CRAVEN: I agree with you. I'm presuming you
24 have not served in government to this time in an elected
25 capacity.

26 MS. CAMPBELL: Well, on my campus I have.
27
28

1 SENATOR CRAVEN: All right. Well, then, you would know.
2 You know that in matters of this nature, politics, although
3 sometimes rather subliminal, is always there very evident, even
4 though it may not be obvious. And believe me, any decision made
5 by the Governor to make an appointment to anything in which we
6 are involved, I'll tell you, somebody's in there lobbying for
7 women, for Blacks, Whites, Browns, Orientals, men, women, what
8 have you. That always enters into it somewhere along the line.

9 MS. CAMPBELL: But I think you have to look at the level
10 at which it enters, and who has entree to opportunities to
11 influence the Governor and who doesn't. And it's my belief that
12 an advisory committee broadly represents -- in its best form, it
13 would broadly represent many sectors of the population so that
14 everyone would have equal entree. And this question of politics
15 would certainly definitely come into play. I'm not so naive as
16 to say that it wouldn't. It would just be that people would have
17 equal access to that process.

18 SENATOR CRAVEN: Well, you know, we would like to think
19 here that every citizen has equal access. I suppose I would be
20 naive really in thinking that they do.

21 Really, sometimes the people say we don't, but that's
22 based on the fact that they have really never tried, having made
23 up their minds that they just don't, and as a result, they don't
24 try.

25 MS. CAMPBELL: Students feel that it's not that we don't
26 try; it's that our access and the access of a lot of other
27 sectors of the California population is not as great as others,
28 and an advisory committee would help to alleviate that.

1 SENATOR CRAVEN: Yes, I understand, and you feel in the
2 main that a reflection on the Board of Regents of all these
3 ethnic qualities and what have you would make for a better
4 institution.

5 MS. CAMPBELL: Certainly.

6 SENATOR CRAVEN: Very well. Thank you very much.

7 VICE-CHAIRMAN JOHNSON: There's a motion before us.
8 Senator Petris.

9 SENATOR PETRIS: Yes, very brief.

10 VICE-CHAIRMAN JOHNSON: Very brief.

11 SENATOR PETRIS: I can clarify that questions regarding
12 the makeup. I have a Constitution here. May be you should carry
13 that back with you.

14 The makeup of the Advisory Committee, the Constitution
15 says first:

16 "... that Regents shall be able
17 persons broadly reflective of the
18 economic and cultural and social
19 diversity of the State...."

20 and it says:

21 "... in the selection of the Regents,
22 the Governor shall consult an advisory
23 committee composed as follows: The
24 Speaker of the Assembly"

25 who is already a Regent ex officio,

26 "... and two public members appointed
27 by the Speaker, the President Pro Tem
28

1 of the Senate and two public members
2 appointed by the Rules Committee,
3 two public members appointed by the
4 Governor, the Chairman of the Regents
5 of the University, an alumnus of the
6 University chosen by the Alumni
7 Association, a student chosen by the
8 Council ..."

9 I guess that's your spot,

10 "... Council of Student Body
11 Presidents, and a member of the
12 faculty of the University chosen
13 by the Academic Senate."

14 That's a pretty good cross-section.

15 I have two recommendations. One is I think perhaps you
16 ought to get the students to apprise the Governor that you're
17 aware of this provision in the Constitution and ask him directly
18 by letter or otherwise to try to follow that. He isn't obligated
19 to accept any of the nominations of the Advisory Committee, but
20 the input may be helpful to him.

21 I would also suggest that as you're working with
22 Regents, the track record of an individual ought to be recorded
23 so that if you really have a grievance against an individual
24 member who has not been fair in his treatment of the students, or
25 a particular program of the students such as affirmative action,
26 then if that name comes up, you can let us know on the basis of
27 your actual observation over a period of time: This is the track
28

1 record that we see which makes us unhappy, and then the person
2 can respond.

3 That's all I have to say, other than to echo Senator
4 Roberti's comments.

5 VICE-CHAIRMAN JOHNSON: Motion before the House. Call
6 the roll, please.

7 SECRETARY WEBB: Senator Craven.

8 SENATOR CRAVEN: Aye.

9 SECRETARY WEBB: Senator Mello. Senator Petris.

10 SENATOR PETRIS: Aye.

11 SECRETARY WEBB: Senator Johnson.

12 VICE-CHAIRMAN JOHNSON: Aye.

13 SECRETARY WEBB: Senator Roberti.

14 VICE-CHAIRMAN JOHNSON: We'll leave the roll open.

15 You're confirmed, however. You have the three votes.
16 You're out of this Committee; you may not be confirmed, but
17 you're out of here.

18 SENATOR PETRIS: One step at a time.

19 VICE-CHAIRMAN JOHNSON: Let's see, who else do we have
20 here, Mr. Frank L. Hope, Member of the Regents of the University
21 of California.

22 You just heard what went on ahead of you. Now would you
23 tell us why you think you want to continue on?

24 MR. HOPE: Thank you, Senator. I won't be continuing
25 on; this is my first. I'm a beginner.

26 VICE-CHAIRMAN JOHNSON: Well, I mean you're there now.

27 MR. HOPE: Yes, sir. I hope to continue on.
28

1 As a graduate of Berkeley, married to a graduate of
2 Berkeley, paying student fees for three attendees of the
3 University of California, and having had the opportunity to work
4 very closely with the Chancellors, all of the Chancellors of the
5 U.C.S.D. campus in attempting to establish the Chancellor's
6 Associates and various programs there, I feel I do have
7 substantial background in business of the University of
8 California.

9 I'm a great fan of the University. To me, serving as a
10 Regent would be a tremendous thrill. I hope to be able to
11 contribute to the goals of the University in that way.

12 VICE-CHAIRMAN JOHNSON: Any questions of the Members?

13 SENATOR PETRIS: Can you tell us, having heard the prior
14 questions on student fees, what your attitude is?

15 MR. HOPE: I would tend towards --

16 SENATOR PETRIS: Not as a parent who's paying right now,
17 but as an overall policy.

18 MR. HOPE: As a matter of fact, I wonder -- we lowered
19 the student fees the other day, and I asked whether I should
20 abstain, being a paying member.

21 I would tend towards the side of no fees. I know that's
22 not totally practical, but I would tend to lower student fees to
23 the extent that we can obtain proper State support for --

24 SENATOR PETRIS: From the public.

25 MR. HOPE: Yes. I would not tend to lean towards the
26 side of increased student fees.

27

28

1 SENATOR PETRIS: One other question. What do you see --
2 well, it's a two-part question, but you take either one -- what
3 do you see as the greatest challenge ahead for the University as
4 a Regent based on the short time you've served; or, what would be
5 your highest priority of something that you really think rather
6 urgently needs to be done to improve things at the University?

7 MR. HOPE: I think from what I've seen over the years of
8 my association and just from what I've heard since I've been
9 there, the key thing that this University has been able to
10 achieve is an incredible quality level that is usually not
11 consistent with the size, and the ability that the University has
12 had to reach so many people, so many students. I would think
13 that anything we can do to preserve this quality -- it is, in
14 fact, as I've been told and as I believe, the finest institution
15 of its kind perhaps in the world, certainly in the United States.

16 This has led, I think, to tremendous benefits to the
17 State of California, and to all of us. So I think that quality,
18 as difficult as it might be to put a finger on something, we have
19 to be very careful with.

20 SENATOR PETRIS: Do you need more flexibility in salary
21 scales and so forth, and faculty, in light of the competition
22 from Texas and other states as well?

23 MR. HOPE: I think so. I would prefer to raise faculty
24 salaries and allow -- we're going through all sorts of gymnastics
25 to allow the faculties to be able to buy a house or to qualify
26 for a mortgage. As a person who is at least partly involved in
27 running a business and competing in the marketplace for the kind
28

1 of talent you need to be effective, I think it would be ideally
2 -- now, I'm not sure how practical all this is -- but ideally we
3 should be able to reach out and pay the market rate for who we
4 need to --

5 SENATOR PETRIS: I had a bill during the big interest
6 crunch that would provide loans to young faculty coming into the
7 system at a rate lower than the market. The question is what's
8 the source going to be; should it be General Fund. I was hoping
9 to make it available through the pensions funds, but the pension
10 people jumped on it, and that was the end of that bill.

11 Do you favor some kind of additional over and above the
12 salary because of our disproportionate high cost of living in
13 California compared to other states, and particularly real
14 estate? Do you favor any kind of a University or State program
15 to help solve the housing problem for faculty?

16 MR. HOPE: Well, we're embroiled in that right now,
17 Senator. We have before us several programs, including
18 University-built for sale housing to faculty at lower than market
19 rates, and we also have several mortgage, guarantor mortgage
20 subsidy programs, one of which will be back to us for action in a
21 very few months. The University Regents, and this is the
22 Regents' funds, as I understand it, primarily that are being used
23 in this respect, and also borrowed funds from the private sector.
24 There are programs right now that we are implementing in that
25 respect.

26 SENATOR PETRIS: I'm glad to hear that. We're losing
27 good people who are satisfied with the salary, but when the cost
28 of a home is thrown in, they simply can't afford to do it.

1 MR. HOPE: It's difficult to live in West Los Angeles on
2 24,000 a year. It's just almost impossible.

3 SENATOR PETRIS: Yes, thank you.

4 VICE-CHAIRMAN JOHNSON: Anyone else?

5 SENATOR CRAVEN: I'm prepared to make a statement, Mr.
6 Chairman, if you're ready.

7 VICE-CHAIRMAN JOHNSON: I'm ready.

8 SENATOR CRAVEN: I've had the good fortune of knowing
9 Mr. Hope for some years, and he is, of course, an architect of
10 national and even international standing. His work with the
11 University of California in San Diego campus has been
12 outstanding, and I know the expression of the Dean or the
13 Chancellor at that campus is of the very highest degree as to
14 Mr. Hope and his competency. As an alumnus of the University of
15 California, he has the love which would be associated with that
16 relationship, and I'm sure that he would do an outstanding job.

17 Therefore, it is with a great deal of pleasure that I
18 would recommend his confirmation to the Floor.

19 VICE-CHAIRMAN JOHNSON: Senator Petris, did you attend
20 the University of California at Berkeley?

21 SENATOR PETRIS: Yes, sir, I'm proud to tell you.

22 (Laughter.)

23 SENATOR PETRIS: I also had a tie-in with Dr. Campbell,
24 who's a Stanford law school man. So I was pleased to see a
25 person of both schools be nominated.

26 VICE-CHAIRMAN JOHNSON: You seem to be very, very
27 reserved today, and you didn't bore in like you normally do, so I
28 figured you must have gone to Cal.

1 (Laughter.)

2 VICE-CHAIRMAN JOHNSON: Well, so did I. I went to
3 Berkeley, too. They threw me out.

4 MR. HOPE: I came close.

5 VICE-CHAIRMAN JOHNSON: So I became an Independent.

6 (Laughter.)

7 VICE-CHAIRMAN JOHNSON: We have a motion. Is there
8 opposition? Are you opposing this nomination?

9 MS. CAMPBELL: I have a number of questions. Is that
10 possible?

11 SENATOR CRAVEN: Are they different, Ms. Campbell, than
12 the others?

13 MS. CAMPBELL: Yes.

14 VICE-CHAIRMAN JOHNSON: This is not a normal procedure.
15 We've got a long agenda.

16 We'll bring you up, come on. We've got a long agenda,
17 and you realize that. So, the Committee will not ask any
18 questions; we'll let you ask them and I'll try to redirect them
19 as briefly as I can.

20 MS. CAMPBELL: Mr. Chair, the question that we are
21 interested in addressing to Mr. Hope regards his ability to bring
22 specific expertise or qualities to the Regents that will assist
23 him in representing the interests of women and minorities on the
24 Board.

25 We were wondering if you could ask him what expertise he
26 thinks he brings, and what, if any, specific ideas for increasing
27 minority enrollment at the University he has.
28

1 VICE-CHAIRMAN JOHNSON: Is that a little different from
2 the other question that you asked the other member?

3 MS. CAMPBELL: Yes.

4 VICE-CHAIRMAN JOHNSON: Did you hear the question?

5 MR. HOPE: Yes.

6 VICE-CHAIRMAN JOHNSON: Do you want me to repeat it? I
7 can't. You go ahead.

8 MR. HOPE: No, that's fine.

9 I don't want to be flippant about a question like that,
10 but with four daughters and a wife, one learns a great deal about
11 women's rights in the family.

12 (Laughter.)

13 I don't see any objections, or anyone standing in the
14 way of the rights of women in the University system, certainly
15 not me. I just don't think that kind of prejudice exists.

16 As far as the development of minority enrollment in the
17 University, I know that is a very significant concern of the
18 administration, particularly of the University, because I've
19 talked to the President about it. He feels, and I think perhaps
20 he's right, that raising the standards of education in the high
21 schools, particularly at the high school level, standards of
22 minority education at the high school level would allow more
23 minority students to become eligible for the University, if we
24 keep the University system at a price level so it's not an
25 elitist organization. I think that we can see, hopefully, a
26 trend towards more minority students attending.

27
28

1 There isn't anything standing in their way of attendance
2 now except their desire and their eligibility in terms of
3 academic qualifications.

4 MS. CAMPBELL: Thank you.

5 I have one question for Mr. Watkins, but I'll wait until
6 such time.

7 VICE-CHAIRMAN JOHNSON: Did you get your answer?

8 MS. CAMPBELL: It was definitely an answer, yes.

9 VICE-CHAIRMAN JOHNSON: Do you think we ought to confirm
10 him?

11 MS. CAMPBELL: I'd like to abstain.

12 (Laughter.)

13 VICE-CHAIRMAN JOHNSON: Spoken like a true politician.
14 Why don't we abstain, then see what happens? No, I heard a
15 motion.

16 Call the roll, please.

17 SECRETARY WEBB: Senator Craven.

18 SENATOR CRAVEN: Aye.

19 SECRETARY WEBB: Senator Mello. Senator Petris.

20 SENATOR PETRIS: Aye.

21 SECRETARY WEBB: Senator Johnson.

22 VICE-CHAIRMAN JOHNSON: Aye.

23 SECRETARY WEBB: Senator Roberti.

24 VICE-CHAIRMAN JOHNSON: Leave the roll open.

25 MR. HOPE: Thank you.

26 VICE-CHAIRMAN JOHNSON: Next is Dean Allen Watkins.

27 MR. WATKINS: Yes, sir.
28

1 VICE-CHAIRMAN JOHNSON: That's number three on the list.
2 Would you like to tell us why you want to serve as a Regent?

3 MR. WATKINS: Well, I've been Regent for about 15 years.
4 I've always had an interest in higher education. I recognize the
5 importance and value that it has to society, and particularly to
6 the people of California. And I've enjoyed working with the
7 other Regents and the administration of the University, and I
8 believe that my record justifies my reappointment.

9 VICE-CHAIRMAN JOHNSON: Any questions of Mr. Watkins?
10 Senator Petris, do you have any questions?

11 SENATOR PETRIS: Yes. I should know this. I'm
12 embarrassed, because you've been on the Board a long time.

13 Of course, I'm interested in all phases of education.
14 We don't go through all that stuff normally, but I've been
15 increasingly concerned about student fees. That's why I've asked
16 the one question of everybody, student fees.

17 I guess you can tell my own feeling is that we ought to
18 limit them as much as possible, as we've done since day one.

19 I don't know how you've been voting on that issue. We
20 kind of imposed them on you last time, which is to our shame, I
21 think. But can you just tell us what your overall feeling is
22 about the share that the students should pay toward the cost of
23 the education?

24 MR. WATKINS: Well, let me say first, I'm a strong
25 believer in publicly supported higher education. At the same
26 time, I believe that human beings appreciate things that they
27 receive if there's at least a small price paid for it.
28

1 I think what I'm saying is that I generally support the
2 present level, the present proportion of the cost of education at
3 the University of California that the students are now paying as
4 long as there is a student aid program, a student loan program,
5 and a fee deferral system to go along with that so that no one is
6 denied the opportunity of a higher education because of the lack
7 of money.

8 SENATOR PETRIS: Thank you.

9 VICE-CHAIRMAN JOHNSON: Senator Craven, do you have any
10 questions?

11 SENATOR CRAVEN: No, sir. I would move the confirmation
12 of Mr. Watkins, Mr. Chairman.

13 VICE-CHAIRMAN JOHNSON: Do you have any questions?

14 MS. CAMPBELL: I had one brief question.

15 Mr. Chair, the students that I represent are interested
16 in asking Mr. Watkins something regarding the committees on the
17 Board of Regents.

18 It currently happens right now that the Board of Regents
19 has standing committees on both buildings and grounds and
20 hospital government, as just two examples. We were wondering if
21 Mr. Watkins could explain for us why the Board does not have a
22 permanent standing committee on affirmative action?

23 VICE-CHAIRMAN JOHNSON: Mr. Watkins, through the Chair,
24 I trust that you heard the question. I don't want to bore you by
25 repeating it.

26 MR. WATKINS: I believe we do have, or at least we have
27 had a committee on affirmative action. I have not been appointed
28

1 to membership on that committee, but I do know that it functioned
2 all last year and, I believe, this year.

3 MS. CAMPBELL: It's currently a temporary committee.

4 MR. WATKINS: Your question is why has it not been made
5 a permanent standing committee.

6 MS. CAMPBELL: And there don't seem to be plans
7 currently to do that, yes.

8 MR. WATKINS: I can't speak for the Board on that. I
9 could say from past experience, though, that when new committees
10 of this sort have been started, they generally start out as
11 special committees, and their function and service to the process
12 is evaluated, and either they are dropped or they become standing
13 committees. And I would suspect that this one would become a
14 standing committee.

15 MS. CAMPBELL: Mr. Chairman, if we could just ask
16 Mr. Watkins whether he feels that it should become a standing
17 committee?

18 VICE-CHAIRMAN JOHNSON: Through the Chair, do you think
19 it should become a standing committee?

20 MR. WATKINS: On the whole, yes. I think that it has
21 served a useful function in keeping the administration active and
22 interested in this subject. And yes, I would vote to make it a
23 standing committee.

24 MS. CAMPBELL: Thank you very much.

25 VICE-CHAIRMAN JOHNSON: You have a right to abstain
26 because the witness did earlier.

27 Does that answer your question all right?
28

1 MS. CAMPBELL: Yes, thank you.

2 VICE-CHAIRMAN JOHNSON: I heard a motion from Senator
3 Craven.

4 Is there any opposition?

5 No opposition, call the roll.

6 SECRETARY WEBB: Senator Craven.

7 SENATOR CRAVEN: Aye.

8 SECRETARY WEBB: Senator Mello. Senator Petris.

9 SENATOR PETRIS: Aye.

10 SECRETARY WEBB: Senator Johnson.

11 VICE-CHAIRMAN JOHNSON: Aye.

12 SECRETARY WEBB: Senator Roberti.

13 VICE-CHAIRMAN JOHNSON: Leave the roll open.

14 SENATOR PETRIS: Mr. Chairman, I wanted to point out to
15 Ms. Campbell on behalf of the Governor, the very first
16 appointment he made to the State Board of Education was a woman
17 who had served previously in the County Board in L.A. and made a
18 very good impression on this Committee, which recommended
19 unanimously as I remember.

20 I think the students ought to know that, because
21 although he might miss on these three, he isn't missing somewhere
22 else. And perhaps sometimes, when you consider all the agencies,
23 the balance may come out better.

24 MS. CAMPBELL: That's a trend that we'd like to see more
25 of.

26 SENATOR PETRIS: Fine. I think you ought to know that.
27
28

1 VICE-CHAIRMAN JOHNSON: That takes care of the
2 University. Now they can go back to work.

3 Now let's see what we have here. Mr. Andrew Wortman,
4 Dr. Wortman, Member of the State Air Resources Board.

5 Did you bring your boss with you today?

6 DR. WORTMAN: He led me here by the hand; I couldn't
7 find the room.

8 VICE-CHAIRMAN JOHNSON: Dr. Wortman, do you want to tell
9 us why you want to serve on the State Air Resources Board?

10 DR. WORTMAN: Because of my background, my education,
11 and my experience. I have a degree from the University of
12 California, Berkeley, with highest honors. I held high
13 scholarships there.

14 VICE-CHAIRMAN JOHNSON: Are you from the University of
15 California at Berkeley, too?

16 DR. WORTMAN: Yes, sir, B.S. and M.S., and U.C.L.A.
17 Ph.D.

18 VICE-CHAIRMAN JOHNSON: That's what I got was a B.S.

19 DR. WORTMAN: I have been in the industry since '75. I
20 ran two small consulting operations. I specialize in propulsion,
21 thermodynamics, aerodynamics problems. I served as a consultant
22 to the government, run my own contracts.

23 In '82, I decided to change my way of life and join the
24 Cal State University at Fullerton as a Professor of Mechanical
25 Engineering, Associate Professor actually. And I would like to
26 participate and do some good for the public.

27

28

1 Along the lines of the concerns expressed by Senator
2 Petris, I got my education only because when I was here, tuition
3 was \$37 a semester. We came to this country without a penny.
4 Without that, I would not have had my B.S.

5 VICE-CHAIRMAN JOHNSON: I wish that student had not left
6 so soon, because she ought to hear this. This is what I was
7 talking about earlier.

8 SENATOR PETRIS: Can we switch him over to the Regents
9 from the Air Resources Board?

10 (Laughter.)

11 VICE-CHAIRMAN JOHNSON: These are the kind of people
12 that show up in this business.

13 Do you have any questions of Dr. Wortman? Senator
14 Petris.

15 SENATOR PETRIS: I have some questions on ARB rather
16 than education, though I like your stance on that. When I went
17 to U.C., it was only 27.50, so that kind of dates me.

18 I've been, of course, over the years concerned about the
19 quality of air in California. And I've carried a lot of
20 legislation in the past. And I need to get some kind of an idea
21 about your view of the need for continuing clean air. We have
22 fairly major controversies every year on that subject.

23 One of the issues is, should there be a difference
24 between the California standard and the federal. President
25 Reagan has often said, and he said it when he was Governor, that
26 as long as the federal government has a standard established by
27 Congress, it doesn't seem right to have California held to a
28 higher standard.

1 I personally disagree with that, because I think the
2 standard ought to match the problem. And there's no state in the
3 Union that has a problem worse than ours. And I don't enjoy
4 being compared to a state like windblown New England, one of the
5 New England states, where smog doesn't have a chance to settle
6 anywhere. It gets blown away because of the conditions over
7 there.

8 So, if somebody says to me: I see your laws in
9 California are ten times as tough as Vermont, my answer is:
10 Well, how bad is their problem.

11 For that reason I need to know, do you feel we should
12 reduce our standards to the federal level? Or should we continue
13 to aim at a standard which is more and more likely to solve the
14 problem?

15 DR. WORTMAN: We have been forcing the EPA by enforcing
16 tougher standards. And I'm entirely in agreement with you in
17 that our problems are much greater, and I think we should have
18 tougher standards. You're right, something like Nevada, for
19 instance, or New England does not require the sort of standards
20 on emissions that we do in Los Angeles.

21 So, yes, I think that California should have more
22 stringent laws.

23 SENATOR PETRIS: I understand that some people favor
24 exceptions in some automobiles. There are some European or maybe
25 Japanese, very flashy, very fast, exotic automobiles that don't
26 have our controls on them, and buyers who are eligible to buy it,
27 and they usually are pretty high priced, would like to see us
28

1 make exceptions in those cases. That's another fight we had in
2 the early stages.

3 How do you feel about that?

4 DR. WORTMAN: I feel that all cars most comply with the
5 law; however, I feel that if somebody has the money and the
6 desire to spend on some vehicle, then modify it to comply with
7 the law, then as a citizen he has the right to own what he wants.
8 But he must comply with the law.

9 SENATOR PETRIS: Must comply. So that the same standard
10 applies to him as to any of his --

11 DR. WORTMAN: To all vehicles registered in California.

12 SENATOR PETRIS: Do you think the inspection program
13 that we just started is working, or is it too early to tell?

14 DR. WORTMAN: It's too early to tell. There are some
15 squawks coming up, as expected of course. Some people feel that
16 they are being ripped off.

17 I think the program is absolutely necessary. We may
18 have to modify it somewhat to make sure that our citizens don't
19 feel that they're being taken advantage of, and there are a lot
20 of complaints. So, I have a feeling we will modify it, but the
21 inspection, I believe, is necessary. There are too many cars
22 around smoking ferociously, uncontrolled.

23 SENATOR PETRIS: Thank you, Mr. Chairman.

24 VICE-CHAIRMAN JOHNSON: Any further questions?

25 SENATOR MELLO: Did Gordon Duffy support you?

26 MR. DUFFY: I certainly do, Senator. Dr. Wortman has
27 been a very good Member of the Board. He has voted consistently
28

1 VICE-CHAIRMAN JOHNSON: Moved by Senator Craven. Call
2 the roll.

3 SECRETARY WEBB: Senator Craven.

4 SENATOR CRAVEN: Aye.

5 SECRETARY WEBB: Senator Mello.

6 SENATOR MELLO: Aye.

7 SECRETARY WEBB: Senator Petris. Senator Johnson.

8 VICE-CHAIRMAN JOHNSON: Aye.

9 SECRETARY WEBB: Senator Roberti.

10 VICE-CHAIRMAN JOHNSON: We'll leave the roll open.

11 (Thereafter the call was lifted on
12 all the previous appointees appearing
13 today, and Senator Mello supported all
14 of them. This portion of the Senate
15 Rules Committee hearing was terminated
16 at approximately 3:45 P.M.)

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1 for higher standards in California, particularly for increasing
2 pressure on diesel engines, which is one of our major problems
3 that we have now. He's consistently been in favor of high
4 quality air in California.

5 SENATOR MELLO: I'll move his confirmation be
6 recommended to the full Floor.

7 VICE-CHAIRMAN JOHNSON: Are there any persons here or
8 anybody in opposition to this gentleman?

9 Without opposition, call the roll.

10 SECRETARY WEBB: Senator Craven. Senator Mello.

11 SENATOR MELLO: Aye.

12 SECRETARY WEBB: Senator Petris.

13 SENATOR PETRIS: Aye.

14 SECRETARY WEBB: Senator Johnson.

15 VICE-CHAIRMAN JOHNSON: Aye.

16 SECRETARY WEBB: Senator Roberti.

17 VICE-CHAIRMAN JOHNSON: We'll leave the roll open.

18 DR. WORTMAN: Thank you, sir, gentlemen.

19 VICE-CHAIRMAN JOHNSON: All right, we only have one more
20 item. We have Ben Noble, Commission on Judicial Performance;
21 Carmen J. Grande, that's the Commission on Peace Officer
22 Standards and Training; and Charles B. Ussery, Commission on
23 Peace Officer Standards and training.

24 Is there anyone opposed to those three appointments? I
25 haven't had anything in my files on them.

26 SENATOR CRAVEN: No opposition, I would move them, Mr.
27 Chairman.
28

CERTIFICATE OF SHORTHAND REPORTER


I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

29th day of June, 1984.


EVELYN MIZAK
Shorthand Reporter

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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

MONDAY, DECEMBER 3, 1984
4:00 P.M.

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BEFORE THE
SENATE RULES COMMITTEE

Hearing in re Confirmation)
of:)
JOHN T. MC CARTHY)
_____)

ROOM 113
STATE CAPITOL
SACRAMENTO, CALIFORNIA

MONDAY, DECEMBER 3, 1984
4:00 P.M.

Nadine J. Parks
Shorthand Reporter

MEMBERS PRESENT

David Roberti, Chairman
William Craven
Nicholas Petris
Henry Mello
John T. Doolittle

OTHERS PRESENT

Cliff Berg
Pat Webb
Rick Rollens
Nancy Michel
John T. McCarthy, Governor's appointee
to the Agricultural Labor Relations Board

P R O C E E D I N G S

--oOo--

CHAIRMAN ROBERTI: The first item of business are Governor's appointees. Appearing today is John T. McCarthy, a member of the Agricultural Labor Relations Board.

Mr. McCarthy, we'll ask you what we ask all the Governor's appointees, why you feel you are qualified I guess to retain this position.

MR. MC CARTHY: Well, if I might be allowed to go back and just --

CHAIRMAN ROBERTI: Whatever leeway you want.

MR. MC CARTHY: If I can go back and just very briefly give you some idea of my background, and I think that will hopefully answer the question.

After graduating from Chico, I was a Coro Foundation Fellow, and I had my first assignments to labor organizations and the Coro Foundation. I was assigned to two separate labor unions in the Bay Area and I was also assigned to the California State Mediation and Conciliation Service.

At that time I got very excited about industrial relations, the labor movement, and I decided I wanted to be a mediator.

Right after graduating from Coro, the Conciliation Service offered me a position and I went to work for them

1 as an administrative assistant. At that time it was
2 intended that I serve an apprenticeship and then become a
3 mediator via that route.

4 Unfortunately, after I was there about a year,
5 the State Personnel Board changed the regulations and
6 required that a mediator, in order to qualify as a mediator,
7 one had to have, I think, six years of active collective
8 bargaining experience at the table.

9 I left the Conciliation Service, went to work
10 for an agricultural concern that headquartered in Salinas,
11 California. I was there for some nine years. I ended up
12 a vice-president with the organization. I was in charge of
13 personnel and various other things with the company.

14 In 1973, an opening occurred in San Francisco
15 with the State Mediation Service. I returned to them as a
16 mediator. I was there for some six years and I ended up
17 presiding mediator of Northern California.

18 During my tenure with the State Mediation
19 Service, I conducted an enormous amount of representation
20 elections. I also was involved in probably several hundred--
21 involved in mediating several hundred labor disputes,
22 strikes in both the public and private sector.

23 During -- how I got here originally, I guess,
24 was during 1977, Governor Brown was mediating a dispute
25 between the United Farm Workers Union, several California

1 growers, and the Teamsters Union. And sort of the guts of
2 the dispute was a federal action, antitrust action in
3 San Francisco.

4 And the Governor -- I can't remember -- had to go
5 to England or something, so he wasn't able to continue the
6 mediation and I was appointed to it. And actually in a very
7 short period of time everything came together right and the
8 thing was resolved. We not only resolved -- made a
9 settlement in the antitrust action, but we were able to
10 resolve various difficulties that had been festering
11 between the Farm Workers Union and various growers.

12 And I think as a result of that exposure, I was
13 asked to take an appointment with the Board. I was somewhat
14 reluctant initially because being a mediator is a lot more
15 fun than being a Board member. And mediation ends up in
16 hugging matches and the Board members never get involved in
17 hugging matches with anyone.

18 I was -- I accepted the appointment. I guess
19 the first time I was appointed for an unexpired term of
20 some ten months. I was reappointed in '79 I guess it was
21 for a full five-year term, and then reappointed by the
22 present administration in February or March of this year.
23 I've been there some seven years now. I've worked with some
24 three different separate General Counsels all of -- I guess
25 one actually for a very brief duration. And I have worked

1 with some 10 or 12 different Board members.

2 Sure, talk about negative things, but probably
3 a weakness I consider that I have is that I'm not an
4 attorney. Hopefully, I can balance that with my experience
5 in collective bargaining and certainly my experience in
6 agriculture.

7 I think my experience in agriculture has allowed
8 me to sit on the Board and early on in most decisions, in
9 records that we're looking at, I can tell fairly early on
10 if, for example, a grower's defense to the charges that are
11 being brought against him are credible or not.

12 The job has been, in many instances, very
13 exciting; sometimes very, very frustrating. The frustrations
14 generally arise from being constantly almost consumed by
15 a backlog and never being able to seem to really get caught
16 up. It's also frustrating that we seem to be getting sued
17 by all parties rather constantly.

18 It's frustrating probably having, you know,
19 parties speaking negatively of you, I guess, but I am --
20 I'm very optimistic that --

21 CHAIRMAN ROBERTI: I appreciate the feeling. I've
22 been served now about five times in the last two months.

23 MR. MC CARTHY: Okay. It's gone so beyond any
24 of the amount of money that I've got, I just quit worrying
25 about it.

1 I really think what we need to do with the
2 agency -- and I think we are doing it to some extent, and
3 we need to work so much harder on it -- is to get us off
4 the front pages of the paper and back into, you know, page
5 nine or ten in newspapers and try to set some -- to set an
6 environment that's conducive to establishing contracts out
7 there. It's not going to be easy to achieve, and I would
8 have thought that it would have been achieved long before
9 now.

10 I think our success will ultimately be
11 determined by the amount of contracts that are working out
12 in the field. And I think right now we don't have enough
13 to claim that we're in any way successful.

14 I think that's really all I have.

15 CHAIRMAN ROBERTI: Thank you, Mr. McCarthy.
16 Is there any opposition?

17 Well, let me ask you a question. I guess just
18 today a decision came down regarding confidentiality of
19 ALRB files.

20 I understand that originally you voted for the
21 lawsuit and then you opposed it.

22 Can you explain your reasoning for the vote
23 and why the switch?

24 MR. MC CARTHY: Well, I have not had an
25 opportunity to see what the results of that were, but I

1 think the -- from what I understand with the very brief
2 briefing that I got on it, the court determined precisely
3 what my position was on it, that we -- I didn't feel it was
4 important -- I didn't think it was necessary to take a
5 position or appropriate to take a position that the General
6 Counsel did not have jurisdiction of those records. I felt
7 that he did.

8 I thought the appropriate avenue was to go in
9 there as a Board, take the position that the confidentiality
10 of those records was important. And we, as a part of the
11 agency, should be able to go to the court and ask the court
12 to restrain the release of those records, but not to go on
13 the basis that they're our records, and we are the ones
14 that had jurisdiction.

15 And my understanding with a very -- just a quick
16 briefing, that is what the Board (sic) allowed. Now, I had
17 joined the suit originally, but I withdrew my permission
18 from the suit for two reasons.

19 The thing was defused a great deal, in my view,
20 when the General Counsel agreed to excise the names of the
21 farm workers from the records. That seemed to help a great
22 deal.

23 I'm sure it will in any future instances. The
24 second thing was -- well, the reason that I got off from the
25 suit was that the Board -- the majority of the Board desired

1 to say that the Board had jurisdiction of those records,
2 and I didn't think that we did.

3 CHAIRMAN ROBERTI: Any other questions of
4 Mr. McCarthy?

5 Senator Petris says that you're from his
6 district and that helps.

7 Do I hear a motion?

8 SENATOR MELLO: Move for confirmation.

9 SENATOR CRAVEN: Second.

10 CHAIRMAN ROBERTI: Senator Mello moves and
11 Senator Craven seconds.

12 Might as well vote while the going is good. The
13 Secretary will call the roll.

14 MS. WEBB: Senator Doolittle?

15 SENATOR DOOLITTLE: Aye.

16 MS. WEBB: Senator Mello?

17 SENATOR MELLO: Aye.

18 MS. WEBB: Senator Petris?

19 SENATOR PETRIS: Aye.

20 MS. WEBB: Senator Craven?

21 SENATOR CRAVEN: Aye.

22 MS. WEBB: Senator Roberti.

23 SENATOR ROBERTI: Aye.

24 The vote is five to nothing. Confirmation is
25 recommended to the floor. Thanks, Mr. McCarthy.

1 MR. MC CARTHY: Thank you.

2 (Thereupon the hearing was adjourned.)

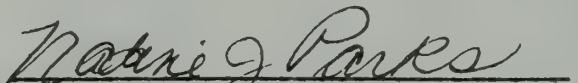
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I, Nadine J. Parks, hereby certify that I am a shorthand reporter for the State of California and that as such reporter, I reported the foregoing Senate Rules Committee Hearing in re Governor's Appointee John T. McCarthy in shorthand writing; that thereafter, I caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney to said hearing and am not interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of January, 1985.


Nadine J. Parks
Shorthand Reporter

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Reported by:

Evelyn Mizak
Shorthand Reporter

MEMBERS PRESENT

Senator David Roberti, Chairman
Senator Ray Johnson, Vice-Chairman
Senator William Craven
Senator Nicholas Petris
Senator Henry Mello

MEMBERS ABSENT

None

STAFF PRESENT

Cliff Berg, Executive Officer
Pat Webb, Committee Secretary
Rick Rollens, Consultant
Nancy Michel, Consultant
Bruce Samuel, Assistant to Senate Rules Committee

GOVERNOR'S APPOINTEES REQUIRED TO APPEAR

ROBERT E. DORAN, Superintendent,
Sierra Conservation Center

ELAINE W. DONALDSON, Member and Chairperson,
Occupational Safety and Health Appeals Board

LAWRENCE A. HARRINGTON, Member,
Occupational Safety and Health Appeals Board

ALBERT M. LEDDY, Member,
Board of Prison Terms

GOVERNOR'S APPOINTEES NOT REQUIRED TO APPEAR

JAMES HENDRICKS, Member, Board of Directors
California Housing Finance Agency

SEBASTIANO STERPA, Member and Chairman, Board of Directors
California Housing Finance Agency

ROGER ARNEBERGH, Member,
California Law Revision Commission

1 ARTHUR K. MARSHALL, Member,
California Law Revision Commission

2 EDWIN K. MARZEC, Member,
3 California Law Revision Commission

4 ANN E. STODDEN, Member,
California Law Revision Commission

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ROGER APHERBERG, Member, California Law Revision Commission	

1 ARTHUR K. MARSHALL, Member,
2 California Law Revision Commission

3 EDWIN K. MARZEC, Member,
4 California Law Revision Commission

5 ANN E. STODDEN, Member,
6 California Law Revision Commission

7 Motion

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8 Committee Action

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9 Adjournment

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10 Certificate of Reporter

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P R O C E E D I N G S

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CHAIRMAN ROBERTI: Governor's appointments appearing today, Mr. Robert E. Doran, Superintendent of the Sierra Conservation Center.

Mr. Doran, we heard testimony regarding your appointment, and I asked for it to be delayed so that we could receive information regarding your role in prison security at Chino during the unfortunate escape of Mr. Kevin Cooper. Based on my staff's interviews, and review of the Department of Corrections' files, and their investigation, it certainly does not appear to us that you were responsible for the inadequate security.

I'm sorry that the point had to be raised, but since you were in an administrative position of some importance in the hierarchy, I think it had to be raised, and best that it was raised. I think that I can say, and I have it from S.O.R. for any of the members who want to review it any further, that the perimeters on security just was not a question that was one for which you were directly responsible.

If you want to make a comment on that also, please feel free to do so.

MR. DORAN: No, I think that covers it adequately. I was very concerned. It just so happens the first thing I did when I became a Deputy Director, I think it was the next week, was I wrote the first memo asking for that fence, and then spent about nine months trying to get it. And unfortunately we had to accelerate the process.

1 CHAIRMAN ROBERTI: Very good, thank you.

2 SENATOR JOHNSON: I move.

3 CHAIRMAN ROBERTI: We have heard Mr. Doran's nomination.
4 There may be new witnesses in opposition. I think that we should
5 let them at least indicate their presence here.

6 Let me point out, however, to let you know what my mind
7 is on this subject, the charges made as far as affirmative action
8 and sensitivity on the part of the Director are serious charges,
9 and they are not charges that either I or the Rules Committee
10 take lightly. Obviously our record is one that we haven't taken
11 those kinds of charges lightly.

12 Nevertheless, both the immediate supervisor and the
13 individual who wrote the memo in question making the original
14 allegations against Mr. Doran, as far as his role in affirmative
15 action and related matters, have both rejected their own reports.

16 That being the case, the Senate Rules Committee would be
17 very hard pressed to put more credence into those reports than
18 the drafters themselves do, absent independent corroborating
19 evidence, which we have not been able to acquire in the last few
20 weeks while Mr. Doran's appointment's been pending.

21 Nevertheless, in fairness to those who have, at some
22 cost to themselves, asked to appear, I would certainly want to
23 entertain your testimony.

24 Are there any new witnesses who have not testified on
25 this matter, both pro and con, who would like to speak? There
26 are three. Why don't you please come on up. Wait, I see five.

27 SENATOR CRAVEN: Mr. Chairman.
28

1 CHAIRMAN ROBERTI: Please state your point and try not
2 to be repetitive of the prior speaker. And please indicate your
3 name and the organization you represent, if any.

4 Senator Craven.

5 SENATOR CRAVEN: Mr. Chairman, we went through a rather
6 lengthy hearing on this gentleman's confirmation in the past.
7 And a great deal of testimony was given, which was summarily
8 investigated and found to be somewhat less than incriminating.

9 I'm wondering whether the persons who wish to appear in
10 opposition today are aware of what that testimony was, and if
11 they are aware, I would suggest that anything that they say along
12 the same lines would be simply a redundant effort.

13 CHAIRMAN ROBERTI: Maybe the first gentleman can speak
14 to that.

15 SENATOR CRAVEN: Fine.

16 CHAIRMAN ROBERTI: I would hope that the witnesses would
17 keep it relatively brief, but I do think they have a right to
18 state their point.

19 Mr. Doran's appointment is a terribly important one. It
20 deals with Sierra Conservation Center, which is, depending on
21 your point of view, looking at it from the aspect of our
22 rehabilitation or penal system, which ever way you want to look
23 at it, and I suspect that these gentlemen should be able to speak
24 to their point of view. That doesn't mean we're necessarily
25 going to agree, but I think they should be able to speak their
26 point of view if they could hopefully keep it relatively brief,
27 because our agenda is a long one.
28

1 Please indicate your name and if you represent an
2 organization other than yourself.

3 MR. GOMEZ: My name is Al Gomez, and I represent the
4 California Department of Corrections. I am currently the Chief
5 Deputy Superintendent at Sierra Conservation Center, and I'm here
6 in support of Mr. Doran's confirmation as Superintendent of
7 Sierra Conservation Center.

8 I am a seasoned veteran of the Department of
9 Corrections, having started my career as a correctional officer
10 24 years ago, and worked through the ranks at seven different
11 institutions to obtain my current position.

12 As second in command, I am considered to be the
13 Superintendent's right-hand man. Robert E. Doran has been a
14 Superintendent and my immediate supervisor for the past ten
15 months. As the Chief Deputy Superintendent, but first and
16 foremost as a minority, I feel I am knowledgeable and obligated
17 to enforce the affirmative action goals and objectives and am
18 qualified to address the concerns placed before this Committee.

19 During the past ten months that Robert E. Doran has been
20 Superintendent at Sierra Conservation Center, I am not aware of
21 any acts of discrimination by Mr. Doran directed at any ethnic
22 groups or females. On the contrary, since Mr. Doran's arrival at
23 Sierra Conservation Center I find him to be a strong and active
24 supporter of the Departmental affirmative action goals and
25 objectives.

26 As an example, shortly after his arrival at Sierra
27 Conservation Center, Mr. Doran assembled a viable group comprised
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1 of key staff personnel at the institution to ethnically balance
2 the work force. I can state unequivocally that this has not been
3 a show and tell type of venture, but instead an effective effort
4 to attract and recruit minorities and/or females to our
5 institution.

6 With regard to his administrative abilities, I view
7 Mr. Doran to be an effective and dynamic administrator. He
8 allows for participative management, but again however, being
9 mindful that he is in charge of the safety and security and
10 operation of the institution with the ultimate responsibility
11 resting on his shoulders.

12 In addition, Mr. Doran has effectively pursued through
13 the major capital outlays process the approval of two additional
14 towers at Sierra Conservation Center. This is in direct response
15 to insure the safety and security of the institution as well as
16 the surrounding community.

17 Based upon my previous statements, my background and
18 knowledge of the Department, and my personal beliefs, I urge this
19 Committee to disregard these unfounded and unsubstantiated
20 allegations and elect to confirm Mr. R. E. Doran as
21 Superintendent of Sierra Conservation Center.

22 Thank you very much.

23 CHAIRMAN ROBERTI: Thank you very much, Mr. Gomez. I
24 think it was important that your statement be read into the
25 record.

26 There may not be any opposition at present. Those who
27 want to testify, I take it, are probably proponents, so why don't
28

1 you just stand at your seats and tell us who you are, and then we
2 can proceed to a vote.

3 MR. JIMENEZ: I'm Manuel Jimenez. I'm Associate
4 Superintendent at the R.C. West Facility.

5 I worked for Mr. Doran as Associate Superintendent of
6 the work force at Patton State Hospital.

7 CHAIRMAN ROBERTI: Thank you.

8 MR. GRAHAM: My name is Charles Graham. I'm Associate
9 Superintendent at Sierra Conservation Center.

10 Mr. Doran hired me approximately nine months ago from a
11 promotional list. I am the affirmative action officer at the
12 institution. I've worked very closely with Mr. Doran, and I can
13 attest to his fairness, his concerted effort to get a balanced
14 work force. And certainly I don't think there's anyone there
15 that would know that better than myself.

16 CHAIRMAN ROBERTI: Thank you.

17 MS. MOORE: My name is Phyllis Moore. I was originally
18 hired at Sierra Conservation Center by Mr. Doran as the employee
19 relations officer, and I can attest to those statements that have
20 already been made. I am in full support of his confirmation.

21 CHAIRMAN ROBERTI: Thank you.

22 MR. CRIBB: My name is Buford Cribb. I'm a correctional
23 administrator for the Department of Corrections. I've known and
24 worked with Mr. Doran since 1971 and attest to all the statements
25 that have been made by Mr. Gomez.

26 CHAIRMAN ROBERTI: Thank you.

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1 MR. BOOKE: I am Edward A. Boone, a program
2 administrator at Sierra Conservation Center. And I concur with
3 Mr. Gomez' statements. I've had the pleasure of working with
4 Mr. Doran at the California Rehabilitation center in Norco when
5 he was Superintendent there in 1981 and '82, and over the past
6 year at Sierra Conservation Center.

7 I can say that Mr. Doran is one of the most efficient
8 and effective managers of the Department of Corrections.

9 CHAIRMAN ROBERTI: Thank you.

10 MR. MOSQUEDA: George Mosqueda, and I'm a correctional
11 lieutenant for Sierra Conservation Center. I too concur with
12 Mr. Gomez' statements. Along with that, I'd like you to know
13 that I see Mr. Doran as a person who demonstrates strong
14 leadership abilities, encouraging individual growth and
15 development of all employees, and respects their opinions,
16 abilities and contributions. He strongly encourages
17 administrative efficiency and effectiveness.

18 CHAIRMAN ROBERTI: Thank you.

19 MR. AVILA: My name is Greg Avila, employee at the
20 Sierra Conservation Center. I've been with the Department of
21 Corrections for 22 years. I have known him for approximately 20,
22 when he was a new employee. He's always been fair; he's always
23 made an effort to seek out women and minorities and to offer
24 employment opportunities. I consider him a very dynamic
25 administrator, a very fair and honest person. I'm in full
26 support of his confirmation.

27 Thank you.
28

1 CHAIRMAN ROBERTI: Thank you.

2 MR. ANDERSON: Dick Anderson, Associate Superintendent
3 at Sierra. I gave my testimony at the prior hearing.

4 CHAIRMAN ROBERTI: Very good, thank you.

5 MR. DAVISON: I'm Edward Davison. I'm currently
6 sergeant at the Sierra Conservation Center, in charge of one of
7 our recruitment teams at Sierra under Mr. Doran's direction.

8 I concur wholeheartedly with Mr. Gomez' summation, and I
9 strongly hope for Mr. Doran's appointment.

10 CHAIRMAN ROBERTI: Thank you.

11 MR. DAVIDSON: My name is Malcolm Davidson, production
12 manager, retired from San Quentin. My association with Mr. Doran
13 has been of the utmost importance to a program there, and I have
14 friends who have been associated with different kinds of minority
15 recruitment programs, and not any of them has said anything at
16 all derogatory. I made it a point to see if their feelings were
17 the same as mine, and I think they hold him in high esteem.

18 CHAIRMAN ROBERTI: Thank you very much.

19 Do I hear a motion?

20 SENATOR CRAVEN: So move.

21 CHAIRMAN ROBERTI: Senator Craven moves Mr. Doran's
22 confirmation be recommended to the Floor for the Superintendent
23 of the Sierra Conservation Center.

24 Secretary will call the roll.

25 SECRETARY WEBB: Senator Craven.

26 SENATOR CRAVEN: Aye.

27 SECRETARY WEBB: Senator Mello. Senator Petris.
28

1 SENATOR PETRIS: Aye.

2 SECRETARY WEBB: Senator Johnson.

3 SENATOR JOHNSON: Aye.

4 SECRETARY WEBB: Senator Roberti.

5 CHAIRMAN ROBERTI: Aye.

6 The vote's four to nothing, Senator Mello's absent.

7 SENATOR JOHNSON: It would be a great day for a jail
8 break up there.

9 (Laughter.)

10 CHAIRMAN ROBERTI: Congratulations, Mr. Doran.

11 MR. DORAN: Thank you.

12 (Applause.)

13 CHAIRMAN ROBERTI: The next appointment is Elaine W.
14 Donaldson, Member and Chairperson of the Occupational Safety and
15 Health Appeals Board.

16 Good to have you with us.

17 MS. DONALDSON: Thank you, Senator.

18 Chairman Roberti, members of the Senate Rules Committee,
19 my name is, as the Senator has just told you, is Elaine
20 Donaldson. On March 15th I began my duties as the Chairman and
21 management member of the Cal OSHA Appeals Board for the term
22 ending in January of 1988.

23 My background and qualifications for my new position has
24 been many faceted and extensive. Since each of you has received
25 a copy of my resume, I will only touch on some points of it and
26 succinctly as possible.

27

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1 I have been a businesswoman and entrepreneur, if you
2 will, for 22 years. During those years, as far as the community
3 is concerned, I was also a school board member for 11 years, a
4 council woman for 4, and mayor of the City of Covina for 2.

5 More importantly, however, I have been an advocate of
6 small business for as many years as I can remember. As a part of
7 that advocacy I served on Senator Roberti's Senate Select
8 Advisory Committee on Small Business for a number of years. I
9 also served as a member of the Advisory Committee for the
10 California Commission for Economic Development, as Vice-Chairman
11 of the California Product Liability Task Force, as a member at
12 large of the National Advisory Council of the Small Business
13 Administration, and as Chairman of the Advisory Council of the
14 first California State Conference on Small Business in October of
15 1980. I also served on Governor Brown's Small Business Statewide
16 Committee.

17 While my focus has been on behalf of small business, of
18 the small business owner actually, and I am pleased that the
19 Governor chose someone from the small business area for this
20 particular spot, my management background brought me into
21 constant contact with both small and large businesses. As
22 co-founder of an industrial supply distributorship, my daily
23 business day included a close association with both small and
24 large manufacturing concerns, their owners and their employers.

25 My concern about our products used on the assembly lines
26 and the tool and dye shops prompted my involvement in product
27 liability legislation and the study of tool safety for the
28 assembly line employee.

1 As I am certain you are aware, the Occupational Safety
2 and Health Appeal Board is responsible for the adjudication of
3 the appeals of employers and employees from the division of CAL
4 OSHA enforcement actions. The Board received 1228 new filings of
5 appeals during the July, 1983 to the June, 1984 period, and
6 disposed of 1025 docketed appeals during that time. We
7 unfortunately have a large backlog of petitions for
8 reconsideration by the Board which the present Board inherited,
9 and which we are aggressively attempting to reduce.

10 The OSHA Appeals Board is an independent agency, and by
11 the very nature of its maintaining a neutral and objective
12 stance, must remain so.

13 From a personal standpoint, I believe we must also be
14 aware of our obligation to constantly aid in improving the
15 working safety of the work force in the State of California. To
16 this end, as Chairman, I will be promoting better communication
17 between our Board and the Standards Board, as well as the
18 division and the consultation service.

19 For many years OSHA projected a negative image in our
20 state, which is unfortunate for a program which should have a
21 positive impact on the working safety for the employees, and on
22 safety guidelines and responsibility for the employer.
23 Hopefully, under my guidance, the OSHA Appeals Board can improve
24 on that image over the next four years with a fresh approach
25 toward constantly improving our appeals process.

26 I ask for your support in my new position, and I'll be
27 happy to answer any questions that you might have.
28

1 Thank you.

2 CHAIRMAN ROBERTI: Thank you. We value in the Senate
3 your counsel and advise in prior capacities, and I think you're
4 going to do an outstanding job. I think it's good to have a
5 small businessperson, who are the ones who find it most difficult
6 to understand, without even talking about complying, with complex
7 rules of operation. So, I think you'll do a good job, and do a
8 good job for the safety at the same time.

9 MS. DONALDSON: Thank you.

10 SENATOR JOHNSON: I'll move her nomination.

11 CHAIRMAN ROBERTI: Senator Johnson moves Elaine
12 Donaldson's nomination as Member and Chair of the Occupational
13 Safety and Health Appeals Board.

14 Is there opposition? Seeing none, the Secretary will
15 call the roll.

16 SECRETARY WEBB: Senator Craven.

17 SENATOR CRAVEN: Aye.

18 SECRETARY WEBB: Senator Mello.

19 SENATOR MELLO: Aye.

20 SECRETARY WEBB: Senator Petris.

21 SENATOR PETRIS: Aye.

22 SECRETARY WEBB: Senator Johnson.

23 SENATOR JOHNSON: Aye.

24 SECRETARY WEBB: Senator Roberti.

25 CHAIRMAN ROBERTI: Aye.

26 The vote's five to nothing, recommended to the Floor do
27 pass.
28

1 Congratulations.

2 MS. DONALDSON: Thank you very much, gentlemen.

3 CHAIRMAN ROBERTI: The next appointment is Lawrence A.
4 Harrington, Member of the Occupational Safety and Health Appeals
5 Board.

6 Mr. Harrington, good to have you with us. Why don't you
7 tell us why you feel you are qualified to assume this position.
8 It's a general question we ask Governor's appointments.

9 MR. HARRINGTON: Senator Roberti and other members of
10 the Rules Committee, my position on the California OSHA Appeals
11 Board is designated by law as that of the public member to be
12 chosen from other than the fields of management and labor.

13 I'm not representing labor, and I'm not an employer. I
14 am a public servant and have pursued this interest as a
15 profession and career for better than 25 years. Approximately 20
16 of those years, I'm proud to say, have been well spent as a civil
17 service employee for the State of California. My management
18 assignments and responsibilities of this period have been
19 various, interesting and meaningful.

20 In tax auditing, I was responsible for ensuring that
21 employees paid their taxes in accordance with the California
22 Employment Insurance Code.

23 As a management and budget analyst, I conducted studies
24 of research and developed systems to improve operations of state
25 programs and ensured that program expenditures were justified,
26 and spent and made appropriate for the support of programs.

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1 As an employment security officer, I administered
2 programs to minimize the hardships of disability and unemployment
3 among California workers.

4 As an assistant community relations secretary for the
5 Governor, I dealt with and made policy recommendations on all
6 matters relating to human rights, labor and discrimination issues
7 in general.

8 As an education consultant and administrator for the
9 Department of Education for better than 12 years, my assignments
10 included: manager of regional planning for vocational education;
11 heading task forces and working committees to implement new laws
12 and legislative budget act language; serving as regional manager
13 for the southern part of the state to implement the school
14 improvement program; conducting studies and developing guidelines
15 to improve safety in school athletics; and in design and use of
16 school facilities. As the manager of the unit responsible for
17 developing programs and assisting the schools in reducing
18 school-related crime and violence, we conducted studies and
19 developed a report which resulted in recommendations to the
20 Legislature and, hopefully, will result in some legislative
21 action.

22 As most recent appointment by the Governor to serve as
23 Deputy Director for the Department of Consumer Affairs, I
24 assisted the Director of that Department in the overall
25 management effort to make sure that the Department worked as
26 efficiently and effectively as possible and on the behalf of the
27 consumer. Our belief was then, and I believe it still is at the
28

1 Department, if the Department worked less than fully efficient,
2 then there would be people that could and should have been helped
3 but did not.

4 I'm also engaged and have been engaged in various
5 community and social service activities, including working with
6 the Boy Scouts, serving on the board that administers annually
7 the local NYSP program, Neighborhood Youth Sports Program. I
8 have served as a member of the Traveler's Aid Society on their
9 Boards of Directors, and have maintained an active role with the
10 Urban League and in the NAACP.

11 Combining these experiences, I think, qualified me for
12 the appointment to the Board. In addition, they have allowed me
13 to develop the skills I think will enable me to function most
14 effectively in that position with the intent of insuring safe and
15 healthful working conditions for California workers.

16 CHAIRMAN ROBERTI: Thank you very much, Mr. Harrington.

17 Are there any questions of Mr. Harrington?

18 SENATOR CRAVEN: I would move the confirmation.

19 CHAIRMAN ROBERTI: Senator Craven moves Mr. Harrington's
20 confirmation do pass and to the Floor.

21 Is there any opposition? You're getting off easy.
22 Seeing none, the Secretary will call the roll.

23 SECRETARY WEBB: Senator Craven.

24 SENATOR CRAVEN: Aye.

25 SECRETARY WEBB: Senator Mello.

26 SENATOR MELLO: Aye.

27 SECRETARY WEBB: Senator Petris.
28

1 SENATOR PETRIS: Aye.

2 SECRETARY WEBB: Senator Johnson.

3 SENATOR JOHNSON: Aye.

4 SECRETARY WEBB: Senator Roberti.

5 CHAIRMAN ROBERTI: Aye.

6 The vote is five to nothing, confirmation recommended to
7 the Floor.

8 Congratulations and thank you.

9 MR. HARRINGTON: Thank you very much.

10 CHAIRMAN ROBERTI: Finally, Mr. Albert M. Leddy, Member
11 of the Board of Prison Terms.

12 MR. LEDDY: I've not prepared a set speech. I would say
13 that as far as being qualified to be on the Board of Prison
14 Terms, I have now been there almost a year, and everybody seems
15 to feel I'm doing a good job. I've been Chairman for the last
16 two months, and most people seem to be satisfied or pleased that
17 I am in that position.

18 I have a background in law and law enforcement. I have
19 had 32 years of either prosecuting or defending criminal cases,
20 so I am familiar with the problems of due process, which are
21 important in our hearings; that is, due process of prisoners who
22 are heard in the life term hearings and also in the revocation
23 hearings.

24 I'll answer any questions that you have.

25 CHAIRMAN ROBERTI: Very good.

26 Any questions of Mr. Leddy?

27 SENATOR CRAVEN: I would move confirmation to the Floor.
28

1 CHAIRMAN ROBERTI: Senator Craven moves the confirmation
2 do pass and to the Floor.

3 Is there any opposition? Seeing none, this is an easy
4 day, the Secretary will call the roll.

5 SECRETARY WEBB: Senator Craven.

6 SENATOR CRAVEN: Aye.

7 SECRETARY WEBB: Senator Mello.

8 SENATOR MELLO: Aye.

9 SECRETARY WEBB: Senator Petris.

10 SENATOR PETRIS: Aye.

11 SECRETARY WEBB: Senator Johnson.

12 SENATOR JOHNSON: Aye.

13 SECRETARY WEBB: Senator Roberti.

14 CHAIRMAN ROBERTI: Aye.

15 Five to nothing, confirmation is recommended to the
16 Floor.

17 Congratulations.

18 Confirmation of Governor's appointments subject to
19 confirmation but not required to appear: Mr. James Hendricks,
20 Member of the Board of Directors of the California Housing
21 Finance Agency; Mr. Sebastiano Sterpa, Member and Chairperson of
22 the Board of Directors of the California Housing Finance Agency;
23 Mr. Roger Arnebergh, Member of the California Law Revision
24 Commission; Mr. Arthur K. Marshall, Member of the California Law
25 Revision Commission; Mr. Edwin K. Marzec, Member of the
26 California Law Revision Commission; Ms. Ann Stodden, Member of
27 the California Law Revision Commission.
28

1 Do I hear a motion?

2 SENATOR CRAVEN: So move.

3 CHAIRMAN ROBERTI: Senator Craven moves that the
4 appointments on Item Four, subject to confirmation but not
5 required to appear, be recommended to the Floor for confirmation
6 do pass.

7 The Secretary will call the roll.

8 SECRETARY WEBB: Senator Craven.

9 SENATOR CRAVEN: Aye.

10 SECRETARY WEBB: Senator Mello.

11 SENATOR MELLO: Aye.

12 SECRETARY WEBB: Senator Petris.

13 SENATOR PETRIS: Aye.

14 SECRETARY WEBB: Senator Johnson.

15 SENATOR JOHNSON: Aye.

16 SECRETARY WEBB: Senator Roberti.

17 CHAIRMAN ROBERTI: Aye.

18 The vote's five to nothing, confirmations are
19 recommended to the Floor.

20 (Thereupon this portion of the
21 Senate Rule Committee hearing was
22 terminated at approximately 3:10 P.M.)

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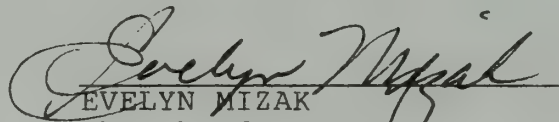
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this
9th day of August, 1984.


EVELYN MIZAK
Shorthand Reporter

